

No. 16392 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION  
No. 11, AFL-CIO,

Appellee.

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Transcript of Record

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Petition to Enforce an Order of the  
National Labor Relations Board

FILED

JUL 23 1959

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.] . . . . .

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## APPEARANCES

THOMAS J. McDERMOTT,

Assoc. General Counsel,

MARCEL MALLET-PREVOST,

Asst. General Counsel,

National Labor Relations Board,

Washington 25, D.C.,

For the Petitioner.

TOBRINER, LAZARUS, BRUNDAGE & NEY-  
HART,

3540 Wilshire Blvd., Suite 1211,

Los Angeles 5, Calif.,

For the Respondent.





United States of America  
Before the National Labor Relations Board  
Division of Trial Examiners  
Branch Office  
San Francisco, California

Case No. 21-CC-281

Case No. 21-CC-282

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION  
No. 11, AFL-CIO,

and

ROBERT B. McCLARY AND BURT A. LOWE,  
JR., d/b/a HYDRO COMPANY

and

PAUL GARDNER, ELECTRICAL CONTRAC-  
TOR

PAUL E. WEIL, ESQ.,

For the General Counsel.

TOBRINER, LAZARUS, BRUNDAGE & NYE-  
HART, by

ALBERT BRUNDAGE, ESQ.,

Of Los Angeles, Calif.,

For the Respondent.

JACK E. HILDRETH, ESQ.,

Of Los Angeles, Calif.,

For Hydro.

Before: Wallace E. Royster, Trial Examiner.

**INTERMEDIATE REPORT AND  
RECOMMENDED ORDER****Statement of the Case**

Upon charges filed by Robert B. McClary and Burt A. Lowe, Jr., d/b/a Hydro Company, herein called Hydro, and by Paul R. Gardner, the General Counsel of the National Labor Relations Board issued an order consolidating the cases for hearing and a complaint dated December 17, 1957, against International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (4) (A) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

In respect to unfair labor practices the complaint alleges in substance that on and since November 12, 1957, at one location, and on and since November 18, 1957, at another, the Respondent has picketed certain access roads leading to projects where employees of Paul Gardner Corporation were employed to induce and encourage employees of other employers to engage in strikes or concerted refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services with an object to force or require the State of California and other

employers and persons to cease doing business with Paul Gardner Corporation.

Respondent's answer denies the commission of unfair labor practices.

Pursuant to notice a hearing was held in Los Angeles, California, on January 27 and 28, 1958, before the undersigned Trial Examiner. All parties were represented and were permitted to examine and cross-examine witnesses and to introduce evidence pertinent to the issues. A brief has been received from counsel for the Respondent.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

### Findings of Fact

#### I. The businesses of the employers affected

Paul Gardner Corporation, a California corporation, is a successor to Paul Gardner, a sole proprietorship, and is engaged in electrical contracting. Its principal office and place of business is located in Ontario, California. During the year preceding November 6, 1957, Paul Gardner has performed services and supplied materials valued in excess of \$100,000 for and to companies engaged in interstate commerce, for and to public utilities, and for and to the State of California in the construction of interstate highways and essential links to such highways.

Hydro is a partnership doing business in California as a plumbing contractor.

I find that Paul Gardner Corporation is now and Paul Gardner, a sole proprietorship, at all times material herein has been, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.<sup>1</sup>

## II. The labor organization involved

The Respondent is a labor organization existing for the purpose of representing employees in relation to wages, hours, and conditions of employment, and during the period of interest here was attempting to persuade employees of Paul Gardner or the Paul Gardner Corporation to become its members.

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<sup>1</sup>In the year preceding November 6, 1957, Paul Gardner, as an individual, performed work for the State of California Highway Department having a value of approximately \$68,000; did work for the General Electric Company having a value of in excess of \$13,000; did work for Pasadena Municipal Light & Power Company having a value in excess of \$9,000; and did work for Upland Lemon Growers Association, Cucamonga Mesa Growers Association, and Orange Heights Orange Association having a value in excess of \$16,000. The work for the Highway Department was on roads used for the interstate transportation of goods and products. The citrus associations and General Electric Company each shipped annually goods and products having a value of more than \$50,000. The Pasadena Municipal Power & Light Company has annual gross billings in excess of \$6,000,000. Contrary to the contention of counsel for the Respondent, I find these facts to satisfy the Board's criteria for the assertion of jurisdiction. See *White's Uvalde Mines*, 117 NLRB 1128, 1138.

### III. The unfair labor practices

About October 1, 1957, Paul Gardner began work on a contract with the State of California to make **certain** electrical installations on the campus and perhaps in the buildings of California State Polytechnic College. Gardner employees were not represented by any labor organization. The work at the college consisted in part of laying conduit in a ditch which had been dug by employees of Hydro and in which Hydro employees were placing water lines. On October 18 a picket was placed by the Respondent on a road at a point of intersection with the ditch bearing a picket sign reading: "To employees: Paul Gardner Electric Company is non-union. Join LU 11-IBEW-AFL-CIO. This is an organizational picket line." The point of picketing was sometimes in view of Gardner employees and sometimes not, depending upon the location of their work along the ditch. This same circumstance applied to the Hydro employees. Robert McClary, a partner in Hydro, testified that he was unable to get his employees to perform work in the ditch at any point from which the picket was visible.

On October 23 McClary discussed the problem of getting his employees to work near the picket with a representative of a plumbers union in the presence of Leroy Devereaux, business representative of the Respondent. McClary testified that on this occasion he asked if he could have his employees work after hours or on weekends when the



picket would not be present. Devereaux answered that it was a 24-hour picket line.<sup>2</sup> On the same occasion Devereaux disclaimed any intention to cause Hydro employees to refuse to work and explained that he was merely trying to organize Paul Gardner employees. On at least three occasions in late October and early November, Gardner employees were not at work on the college project but the picket appeared nonetheless. On November 18 the Respondent removed the picket from the point near the ditch and placed a picket at each of the two principal entrances to the college campus. Devereaux explained that Gardner employees had moved to another area on the campus and the access roads picketed on November 18 were as close to their working place as possible. Many of the employees of other contractors refused to pass the pickets and did not return to work until the pickets were removed on November 21.

On November 12, the Respondent placed a picket at the principal employee entrance of Metropolitan State Hospital in Norwalk, California, where another group of Gardner employees was working. At the appearance of the picket, employees of other employers doing work on the hospital project, including those of Robert E. McKee, the general

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<sup>2</sup>According to Devereaux he meant no more than that the picket would appear whenever Gardner employees did. In the context of the conversation, however, it would seem to be a statement of intention to encourage Hydro employees not to work in the ditch.

contractor, refused to enter the grounds and remained away from work until picket was withdrawn a week or 10 days later.

All employees of Paul Gardner and of the successor Paul Gardner Corporation report for work at their employer's shop in Ontario, California, before 8:00 each morning and return there in the late afternoon from whatever project they have been working on. The General Counsel argues that inasmuch at the Respondent could place pickets at Gardner's place of business and there carry any message it desired to the employees it was trying to organize, that the appearance of pickets on the college and the hospital project where employees of other employers could be and were influenced to refuse to work, constitutes a violation of Section 8 (b) (4) (A) of the Act precisely as found by the Board in the Washington Coca Cola case.<sup>3</sup> There the Board said, "The broad argument that picketing is aimed only at publicizing a labor dispute and not at inducing work stoppages by employees who are required in their regular employment to cross the picket lines has been too often rejected to require further elaboration here." I am convinced that the Board's holding in the Washington Coca Cola case is dispositive of the case at hand. Had the Respondent only a purpose to publicize to

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<sup>3</sup>Brewery and Beverage Drivers and Workers, Local No. 67, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, 107 NLRB 299.

Gardner employees the fact that the Respondent was willing and able to represent them in matters of collective bargaining and was the Respondent concerned only to persuade these workers to become its members, it seems obvious that picketing would have taken place at the Gardner shop where these employees could surely be reached twice each day. But no picket appeared there. The device of placing a picket near the ditch on the college project where he and his sign would be visible to Gardner employees only upon occasion and later at entrances to the college project and to the hospital project where it was certain that employees other than those of Gardner would see the picket and his sign, leads me to the conclusion that an object of the picketing was to advertise to employees other than those of Gardner that Gardner men were not members of a labor organization and thus to encourage these other employees to refuse to work where the Gardner men were employed.<sup>4</sup> I find that by the picketing at the college project on and after November

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<sup>4</sup>“This conclusion rests on the sound premise that a union which can direct its inducements to the primary employer’s employees at the primary employer’s premises, does not seek to accomplish any more with respect to the same employees by directing the same inducements to those same employees at the premises of some other employer. Consequently, the only reasonable inference in such a situation is that inducements which are ostensibly directed at the primary employer’s employees are in fact directed at the employees of the secondary employers.” *International Brotherhood of Teamsters etc.*, 115 NLRB 981, 984.



18<sup>5</sup> and at the hospital project on and after November 12, the Respondent induced and encouraged employees of secondary employers to cease performing services for their respective employers, an object thereof being to cause the State of California and the other employers to cease doing business with Paul Gardner Corporation. I further find that by such conduct the Respondent has engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the act.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth above, occurring in connection with the operations of the various employers described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that the Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

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<sup>5</sup>No picketing prior to that date at the college project is the subject of the complaint. The picketing near the ditch is not alleged to be an unfair labor practice.

Upon the basis of the foregoing findings and conclusions, and upon the entire record in the case, I make the following:

### Conclusions of Law

1. International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By inducing and encouraging employees of Robert B. McClary and Burt A. Lowe, Jr., d/b/a Hydro Company; employees of Robert E. McKee; and employees of other employers at California State Polytechnic College and at Metropolitan State Hospital building project in Norwalk, California, to engage in a concerted refusal to perform services for their several employers with an object of requiring the State of California, other employers and persons to cease doing business with Paul Gardner, or Paul Gardner Corporation, the above-named labor organization has engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### Recommendations

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in the case,

I recommend that International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO, its officers, representatives, and agents, shall:

1. Cease and desist from inducing or encouraging the employees of any other employers working on a project where employees of Paul Gardner or Paul Gardner Corporation are working, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, or commodities or to perform any services for their respective employers where an object thereof is to force or require the State of California or any employer or person to cease doing business with Paul Gardner or Paul Gardner Corporation.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

- (a) Post at its business office copies of the notice attached hereto as an Appendix. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, after being duly signed by official representatives of the Respondent, shall be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) days thereafter in conspicuous places, including all places where notices to members of the Respondent are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material. The Respondent shall also sign copies

of the notice which the Regional Director shall make available for posting at premises where employees of Paul Gardner or Paul Gardner Corporation are working.

(b) Notify the Regional Director for the Twenty-first Region, in writing, within twenty (20) days of receipt of this Intermediate Report and Recommended Order what steps the Respondent has taken in compliance herewith.

Dated this 31st day of March 1958.

/s/ WALLACE E. ROYSTER,  
Trial Examiner.

## APPENDIX

### Notice

To All Members of International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO

Pursant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We Will Not induce or encourage the employees of any employer other than Paul Gardner or Paul Gardner Corporation to engage in a strike or concerted refusal in the course of their employment to use, transport, or otherwise work on goods or to

perform any service where an object thereof is to require the State of California or any employer or person to cease using, handling, selling, transporting, or otherwise dealing in the products of or to cease doing business with Paul Gardner or Paul Gardner Corporation.

Dated.....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. 11, AFL-CIO,

By.....

(Representative), (Title).

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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[Title of Board and Cause.]

## RESPONDENT'S EXCEPTIONS TO THE INTERMEDIATE REPORT

Comes now the Respondent above-named, and excepts to the findings, conclusions and statements in the Trial Examiner's Intermediate Report in the following respects:

Page 2, Lines 17-22—The sentence beginning “During the year \* \* \*”

Page 2, Lines 27-29—The paragraph beginning “I find that Paul Gardner Corporation \* \* \*”



Page 2, Lines 58-61—The sentence beginning “Contrary to the contention \* \* \* and ending \* \* \* for the ascertainment of jurisdiction.”

Page 3, Lines 55-57—The sentence beginning “In the context of the conversation \* \* \*”

Page 4, Lines 4-27—The sentence beginning “I am convinced that the Board’s holding \* \* \*” and ending “\* \* \* within the meaning of Section 8 (b) (4) (A) of the Act.”

Page 4, Lines 31-36—The paragraph beginning “The activities of the Respondent \* \* \*”

Page 4, Lines 40-42—The paragraph beginning “Having found that the Respondent \* \* \*”

Page 5, Lines 7-20—The paragraphs numbered 2 and 3 of the Conclusions of Law.

Page 5, Lines 24-58—All of the recommendations.

Dated: April 21, 1958.

Respectfully submitted,

TOBRINER, LAZARUS,

BRUNDAGE & NEYHART,

By JOSEPH R. GRODIN,

Attorneys for Respondent.

[Received April 23, 1958.]

United States of America, Before the  
National Labor Relations Board

Case No. 21-CC-281

Case No. 21-CC-282

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION  
No. 11, AFL-CIO,

and

ROBERT B. McCLARY AND BURT A. LOWE,  
JR., d/b/a HYDRO COMPANY

and

PAUL GARDNER, ELECTRICAL CONTRAC-  
TOR

DECISION AND ORDER

On March 31, 1958, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in this case, including the exceptions and brief, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner.

### Order

Upon the entire record and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, International Brotherhood of Electrical Workers, Local Union No. 11 AFL-CIO, its officers, representatives, and agents, shall:

1. Cease and desist from:

Inducing or encouraging the employees of any other employers working on a project where employees of Paul Gardner or Paul Gardner Corporation are working, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, or commodities or to perform any services for their respective employers where an object thereof is to force or require the State of California or any employer or



person to cease doing business with Paul Gardner or Paul Gardner Corporation.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its business offices, copies of the notice attached to the Intermediate report and marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent or its representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(b) Mail to the Regional Director for the Twenty-first Region signed copies of said notice for posting at premises where employees of Paul Gardner or Paul Gardner Corporation are working.

(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

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<sup>1</sup>This notice is amended by substituting for the words, "The Recommendations of a Trial Examiner" the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a decision and order" the words "Pursuant to a decree of the United States Court of Appeals, enforcing an order."

(Testimony of Paul Revere Gardner, Sr.)

A. 430 East Granada Court, residence; business, 901 South Sultana Avenue, Ontario.

Q. Are both of those in Ontario?

A. Yes, sir.

Q. Are you connected in any way with Paul Gardner, Electrical Contractor? A. Yes, sir.

Q. Are you he?

A. I am Paul Gardner, Electrical Contractor.

Q. How long have you been in business under that name? A. Since October, 1930.

Q. What sort of business is that, I mean——

A. It is electrical contracting, wiring.

Q. What form does your business take, is it a corporation or partnership, or sole [8\*] proprietorship?

A. Recently it has been incorporated.

Q. How recently?

A. The papers were filed the first of October, 1957.

Q. Are you now operating as a corporation?

A. Yes, sir. [9]

\* \* \*

Q. Have they picketed any other jobs?

A. They have.

Q. Where? A. At Norwalk.

Q. What job is that?

A. That is the Norwalk State Hospital.

Q. What work were you doing at that job?

A. We are installing primary service, street lighting, some pole line work.

(Testimony of Paul Revere Gardner, Sr.)

Q. Do you do that—are you doing that work as a—well, from whom do you hold your contract?

A. The State of California, Department of Architecture.

Q. Are they picketing or have they picketed you at any other jobs?

A. Yes, at Cal Poly Campus.

Q. What is Cal Poly?

A. That is a school campus located west of Pomona, California Polytechnic Institution.

Q. From whom do you hold your contract on that job?

A. The State of California, Division of Architecture.

Q. Where is that job located?

A. West of Pomona on the, known as the Kellogg Campus of [23] Cal Poly.

Q. When did you start performance of that contract in Kellogg Campus?

A. Around the 1st of October, if my memory serves me right.

Q. What work are you doing at the Kellogg Campus?

A. Installing primary service, street lighting, parking yard lighting, and telemetering equipment, control equipment.

Q. In the course of that job have you had occasion to work in the same places as any other contractors?      A. At various times, yes.

Q. Now, at the beginning of that job did you have occasion to work at the same locations as

(Testimony of Paul Revere Gardner, Sr.)

the Hydro Company?           A. We did.

Q. Where was that location on the job?

A. It was on the easternmost part of the job, commonly designated as the field, farming area.

Q. And, what was the nature of the work that was done there?

A. We were installing telemetering connections, wiring, and control circuits for their water system.

Q. And what is the nature of that installation, I mean, what the work consisted of?

A. It is underground conduit, it is placed underground with the water lines, or adjacent to it, or above it.

Q. Was it to be placed in the same underground ditch as the [24] water lines?

A. In this instance it was.

Q. Now, who dug that ditch, do you know?

A. The Hydro people dug the ditch.

Q. Was there any picketing during the time that you were performing that part of the contract?           A. There was.

Q. Can you tell me where the picketing took place?

A. It was on the road where this ditch crossed the road entering the field. I don't believe I know the names of the roads on the campus area.

\* \* \*

Q. (By Mr. Weil): Did your men work every day on that job?           A. Not every day.

(Testimony of Paul Revere Gardner, Sr.)

Q. Now, did you—let us go into that a little bit. Did you have men working on that job?

A. We had men working there, yes.

Q. How many men?

A. I believe at the time there were three, possibly four.

Q. Did those men, do you know whether those men went directly to their job from their homes when they started work in the morning? [25]

A. They went directly to the job from my place of business.

Q. After the job, after they completed their work for a day, did they return to your place of business from that job? A. Yes, sir.

Q. Who furnished the transportation back and forth from it between your place of business and the job? A. I do.

Q. Is that your procedure in all cases?

A. It is a common practice in our job, yes.

Q. How far was it, approximately how far is it from your place of business to that job?

A. Approximately nine miles. [26]

\* \* \*

Q. Now, when you first saw the picketing taking place, how long was that after the picketing commenced, if you know? [29]

A. Well, I was on the job within, I think the second day after the picket was established on it.

Q. Where was the picket at that time?

A. He was down on the ditch that Hydro had dug on the eastern portion of the campus.



(Testimony of Paul Revere Gardner, Sr.)

Q. Was that ditch in sight of where your men were working? A. Yes.

Q. In fact, was that the ditch, the ditch where your men were working?

A. That is where they were working. [30]

\* \* \*

Q. Have you ever been picketed at your place of business by any labor organization?

A. Never have. [40]

\* \* \*

### Cross-Examination

By Mr. Brundage:

Q. Mr. Gardner, as I understand your testimony, some time during the last year an organization was incorporated known as Paul Gardner Electric Corporation, is that correct, sir, or Paul Gardner Corporation?

A. Just Paul Gardner Corporation.

Q. When was Paul Gardner Corporation incorporated?

A. The papers were filed for incorporation on the 1st of October, 1957.

Q. And, did you receive notification from the Secretary of State with respect to the disposition of the papers which were filed with the Secretary of State?

A. They would accept the name as proposed, and that when proper papers were filed with them they would proceed with the [41] corporation.

(Testimony of Paul Revere Gardner, Sr.)

Q. Well, have proper papers been filed with them? A. They have been.

Q. And you have received notice that Paul Gardner Corporation is recognized, is a recognized corporation in the State of California?

A. That is right.

Q. And can you tell me approximately when you received such notification?

A. Around the middle of October.

Q. Now, can you tell me approximately when you commenced work on the California State Polytechnic College job to which you testified?

A. Between the 1st and the middle of October, in that neighborhood.

Q. Somewhere between the 1st and middle of October? A. Yes.

Q. I take it that that was about approximately the same time that you received notification from the Secretary of State with respect to the incorporation, is that correct? A. Well, yes.

Q. And the work that is being performed on the Polytechnic job is work which is being performed by the corporation, is that correct?

A. No, the work being performed by myself as an individual [42] because the contract is in my name. [43]

\* \* \*

Q. Now, first let me ask you, Mr. Gardner, does Paul Gardner Corporation have a place of business? A. They do.

(Testimony of Paul Revere Gardner, Sr.)

Q. And where is that place of business?

A. At 901 South Sultana Avenue.

Q. I am sorry, will you tell me the address again?

A. 901 South Sultana Avenue, Ontario, California. S-u-l-t-a-n-a.

Q. Right now this is the place of business of the corporation. Was this also the place of business of the proprietorship?      A. That is right.

Q. I see. And the corporation has succeeded to the physical assets of the proprietorship insofar as this place of business is concerned, is that right?

A. Right.

Q. Is that right?      A. That is right.

Q. I wonder, Mr. Gardner, if you would physically describe for us this place of business which is now Paul Gardner Corporation?

A. It is located on the southeast corner of Sultana and Ralston Street in Ontario. The property is 100 feet by 172 feet. [46]

Q. That is the real property, I take it?

A. That is right.

Q. On which some sort of building is located?

A. It has a building on it 40 by 110 feet at an "L." That building lies north and south, and there is an "L" goes off of the south end of the 120-foot space going west, for a distance of 60 feet by 24 feet wide.

Q. And an "L," what do you mean by that, sir, do you mean the shape of the building?

A. Yes, and "L."



(Testimony of Paul Revere Gardner, Sr.)

Q. All right. And how far does that go, Mr. Gardner? A. It goes 60 feet by 24 feet wide.

Q. All right.

A. Starting at the front going back the 110 feet to the extent of the building, then a fence continues on back the distance of the 172 feet. The property other than the building is fenced all around. There is an equipment and storage yard south of the building. And a parking area, a paved parking area, gas pump and freight receiving access within the "L." That is it. [47]

\* \* \*

Q. Now, when you are in the office, Mr. Gardner, this office that you refer to there, I take it you concern yourself primarily with the administrative and business functions of the job, is that correct? A. Right. [51]

\* \* \*

Q. In the shed, O.K.

Now, then, beyond the office what do you have, Mr. Gardner, in the building?

A. What do you mean?

Q. In addition to the office?

A. Oh, general supplies that you would find in any modern electrical shop. [52]

\* \* \*

Q. All right. Now, when the truck drives in, does the truck driver ordinarily bring the material into the warehouse, or does he ordinarily store the

(Testimony of Paul Revere Gardner, Sr.)

material on the street, or on the road, or how does that work?

A. He backs up to the door and unloads it in the building.

Q. Does he physically carry it into the building ordinarily?

A. He usually doesn't have to. On the back of the truck he has a freight lift, and it sets it in the building.

Q. Now, he sets it on the freight life and then it is into the building. Who ordinarily operates this freight lift that you speak of?

A. Anyone that happens to be there, usually the bookkeeper.

Q. Usually the bookkeeper? [54]

A. Right.

Q. And when you say anyone who happens to be there, do you mean yourself, or Paul, Jr., if the bookkeeper is not there?

A. Yes, or if some of the men happen to be around the shop when the load of freight comes in they will unload it.

Q. All right. Now, then, I want to be sure that I have this clear. Insofar as the building is concerned, beyond the question of the office, and this general supply room, is there any other room, office, building or anything in which any other activity takes place other than what you have described to us?

A. Well, there is a garage area on this of 60

(Testimony of Paul Revere Gardner, Sr.)

by 24 "L," but there again this material and trucks in that, our trucks——

Q. Material and trucks? A. Yes.

Q. You say your trucks? A. Sure.

Q. All right. And I take it that this is used primarily for the normal purposes that you use a garage, namely, to store your trucks?

A. That is right. [55]

\* \* \*

Q. Now, I want to know if you use the room for any purposes other than storing the material that you have described for us.

A. You might occasionally have a little repair job in the shop, and it would be taken care of there. You might build something in it, we do frequently. [56]

\* \* \*

Q. Around town on these other jobs that you get. All right. Now, what time do the men ordinary report to the shop in the morning?

A. Ordinarily prior to 8:00 o'clock.

Q. Prior to 8:00 o'clock. Is it a rule of the company that everybody reports to the shop?

A. Everybody reports to the shop.

Q. Regardless of where he lives?

A. That is right.

Q. Now, then, when the men get to the shop, they get there prior to 8:00, do you mean they have

(Testimony of Paul Revere Gardner, Sr.)

to be there by 8:00, or do you mean they are told how much prior to 8:00, if they are told?

A. They have to be there by 8:00.

Q. Be there by eight? A. Sure.

Q. O.K. Now, under normal circumstances they get there by 8:00 o'clock, then do they have any kind of timecard? A. Yes, they do.

Q. Do they punch it in when they get to the place?

A. No, we make it out at night when they come in from the job. [72]

Q. There is no timeclock?

A. No timeclock.

Q. Timecard but no timeclock?

A. No timeclock.

Q. When the men arrive at the shop, will you tell me under ordinary circumstances what happens?

A. Well, they just come into the shop, and get assigned to their trucks, or whoever——

Q. Who assigns them to the trucks?

A. Oh, any one of half a dozen of us could. Paul or myself or one of the other men that is working on the job. He says I want a certain man, he might tell us the night before, we tell him take him in the morning.

Q. In which case he will talk directly to the man? A. Sure.

Q. Do these men come into the office, or do they come into the garage, or in the yard, or where do they assemble?

(Testimony of Paul Revere Gardner, Sr.)

A. Some of them come in the back gate, back through the back door. Some of them come in the front door. All of them are usually in the, what we call a receiving door, or where they check materials out, or in that vicinity every morning.

Q. Now, then, on or about 8:00 o'clock do you then assign the men to the trucks, is that what happens?

A. If they are working on a job.

Q. They just get in the trucks? [73]

A. They automatically know where they are going, unless told differently.

Q. Mr. Gardner, with respect to the, do you have certain men who are assigned to driving the trucks as a normal routine?

A. No, it isn't, sorry to say.

Q. By that do I understand you mean something like this, that the men will just decide among themselves who is going to drive the truck out to a job?

A. Among themselves, or an individual says come on, let's go, and they take off.

Q. All right. Now, is there under ordinary circumstances a particular truck assigned to a particular job? Let me be a little more specific. Supposing I was one of the men working on the Cal Poly job, and I take it that if I were working on the Cal Poly job, unless I heard from you or Paul, Jr., to the contrary, I would assume that I would continue working on the Cal Poly job. Now, when I come into the yard in the morning, would I know which truck to go to?



(Testimony of Paul Revere Gardner, Sr.)

A. Well, normally I would say so.

Q. So that of these trucks, you in a sense have them assigned around at least to the extent that at least one truck, unless there are orders to the contrary, will proceed to one job, is that correct?

A. That is the normal procedure.

Q. All right. Now, so that the men will assemble and get [74] on the trucks, and then one of them will decide they are going to drive, or at least they will work that out among themselves, is that right?

A. The guy that decides he is going to drive it usually is in there first.

Q. All right. Now, are there some duties that the men have to perform before they go out on the job?

A. No, I wouldn't say so.

Q. All right. But—

A. But they have particular tools they want to take, or that they trade in for one truck, or another, they load them.

Q. Do the men own their own tools?

A. They all own their own hand tools.

Q. Yes. What kind of tools might they need?

A. Oh, we have various tools, any construction tool that is used on an electrical job.

Q. So they go in and take it out of the shop?

A. It might be on a truck.

Q. Do they sign out for these tools, or anything of that sort?

A. No.

Q. All right. Now, then, they will go on out to the job. Now, do they come back during the day? Do they come back at lunch time?

(Testimony of Paul Revere Gardner, Sr.)

A. No. [75]

Q. Do they come back during the morning?

A. Only if someone needs some materials, someone might come back and pick it up.

Q. But in the normal course of their business they do not return to the shop then again until that evening, is that right? A. Right.

Q. And then, now, what time do they ordinarily leave the job? A. 4:30.

Q. And then they will be driving back to the shop, is that right? A. Right.

Q. Now, Mr. Gardner, as I understand it, they all report at about 8:00 o'clock, and that is regardless of where the job is, is that right?

A. Right.

Q. Now, when they get back the truck drives them back and leaves the job at 4:30, and some may get in—I am sorry, strike that.

The time at which they arrive back will obviously vary depending upon what job they are working at, is that right, Mr. Gardner?

A. Oh, sure. [76]

\* \* \*

Q. (By Mr. Brundage): Yes. My question is whether they are compensated up until the point at which they arrive back at the shop, or whether their compensation ends at 4:30.

A. Their compensation, unless they are working overtime, ends at 4:30.

Q. Yes. [78]

\* \* \*

(Testimony of Paul Revere Gardner, Sr.)

Q. All right. Now, when you first commenced work on the job, where did the work commence?

A. At the extreme east portion of the job where Hydro had dug a ditch for use to lay their water line, and we to lay telemetering line on top of it.

Q. Now, I think you told us this morning, but I wonder if you would mind repeating it, how far from your place of business in Ontario is it to the campus?

A. Well, I think I stated within nine miles. [82]

\* \* \*

Q. I can make the question perhaps a little clearer.

When you got out to the job were your men working in the ditch?

A. Not necessarily in the ditch, alongside of the ditch.

Q. Alongside of the ditch? A. Yes, sir.

Q. And approximately how many men did you have working? A. Oh, three or four.

Q. Three or four. Were there some Hydro men working in the ditch?

A. Not at the time I was out there.

Q. Your men were the only men working in the ditch, is that right? A. That is right.

Q. Was there anyone engaging in any picketing?

A. The picket was established on the road at the end of the ditch, yes.

Q. There was a picket at the road near the



(Testimony of Paul Revere Gardner, Sr.)

ditch, is that [84] right?           A. Right.

Q. And, as I understand it, or do I understand that at that portion of the campus there is not a fence around the property?

A. There is fence on both sides of the road.

Q. Well, was there a fence in between where the people were working in the ditch and where the picket was?

A. I believe there was.

Q. All right. So that the picket was marching, if we might use the term, outside the fence insofar as the campus is concerned, and the people were working inside, is that substantially correct?

A. I wouldn't say that, I would say he was [85] sitting.

\* \* \*

Q. Now, could you, on the basis of your having been out there estimate for us the approximate distance from the ditch to where the car or the picket sign was normally located when you were out there?

A. Well, the car was parked by this tree, pretty close to this bank of dirt, and the sign was right in the bank there. (Indicating.)

Q. I mean, have you any idea in terms of feet or yards?           A. From the ditch, or from what?

Q. Yes, from the ditch, sir. [88]

A. Oh, ten yards. [89]

\* \* \*

Q. Now, directing your attention now to the Nor-

walk job, approximately how far distant is that from your place of business in Ontario?

A. Oh, it is between 35 and 40 miles.

Q. Between 35 and 40 miles?

A. Yes. [94]

\* \* \*

Q. And it was when your employees moved up to the main part of the job that the picket moved up to the main gate, is that [96] right?

A. No, that is not right.

Q. All right. Will you tell me?

A. He moved up later, maybe a week, ten days after we had performed work on the main part of the job.

Q. All right. Now, at the time that they—they did not move a picket up to the main gate before your people moved up to the main part of the job, did they? A. They did not.

Q. When your people moved to what you call the main part of the job, where was that in relationship to the main gate?

A. Well, it is probably half, three-quarters of a mile west of the main gate.

Q. That was inside the campus, is that right?

A. That is right. [97]

\* \* \*

OLIN EUGENE LESH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Weil:

Q. Will you give us your full name, please, and your address?

A. Olin Eugene Lesh. Address, 135 South Manzanita Drive, West Covina.

Q. What is your business or profession, Mr. Lesh?

A. Project superintendent for Robert E. McKee, General Contractor.

Q. I beg your pardon. Is Robert E. McKee, General Contractor, concerned in any way with the Metropolitan State Hospital Extension Project now going on?

A. Yes, we have the general contract of that job.

Q. What does your general contract consist of? I mean, what job are you contracting to do there?

A. Well, the complete building other than the electrical and plumbing work. [104]

\* \* \*

Q. Has that project, to your knowledge, ever been picketed [107] by Local 11?

A. Yes, it has.

Q. Can you tell me when the pickets first appeared? A. 12:30 on November 12th.

(Testimony of Olin Eugene Lesh.)

Q. What, if anything, happened then?

A. Pardon?

Q. What, if anything, happened when the pickets appeared?

A. Well, it was at noon, and all of our employees, and all of our subcontractors' employees did not go back to work.

Q. Do you know whether the employees of the other prime contractors on the job went back to work?

A. They did not.

Q. Were any employees at all working at that time after picketing began?

A. Gardner Electric.

Q. Did that picketing continue after that date?

A. Yes, it did.

Q. At 12:00 o'clock? Did it continue each day after that date for any period of time?

A. Each day until November 21st.

Q. Between the period 12:30 on the 12th of November and November 21st did any of your employees return to work?

A. No.

Q. Did any employees of any other employers on the job return to work other than Paul Gardner's employees? [108]

A. No.

Q. Did Paul Garner's employees work throughout that period?

A. Every day to my knowledge except November 20th.

Q. What happened on November 20th that you know?

(Testimony of Olin Eugene Lesh.)

A. Gardner's men did not work, and there was still a picket.

Q. Did your people return to work that day?

A. No.

Q. Now, did you have occasion to read the picket sign? A. Yes, I did.

Q. Do you recall what it said?

A. Yes, I think so, it said, "To employees: Paul," the initial "F" or "E," "Gardner is non-union. Join Local"—let's see, the initials were "Electrical Workers No. 11," and at the bottom it said, "This is," it said, either "Organized" or "Authorized" picket line.

Mr. Brundage: I wonder if you would like to stipulate. He said this is an organizational picket line. I have the sign, if you are prepared to stipulate.

Mr. Weil: If you have the sign—I haven't seen it yet.

Mr. Brundage: We have the sign. We will bring it in. I mean on my representation if you are prepared to stipulate, "This is an organizational picket line."

Mr. Weil: Fine. I will be glad to accept that stipulation. I will be glad to enter into that stipulation.

Mr. Brundage: All right. [109]

Q. (By Mr. Weil): Now, did the picket line continue through the 21st of November?

A. It was there on the 21st of November, and was removed some time during the day. Now, I

(Testimony of Olin Eugene Lesh.)

don't know whether it was prior or subsequent to noon.

Q. Did your employees return to work after the picket sign was removed? A. Not that day.

Q. Did they return the next day?

A. Yes, on the 22nd.

Q. Now, during the period between the 12th and the 21st of November, 1957, did your employees fail to return to work because of your orders? In other words, did you order them not to come back to work? A. No; I did not.

Q. Where was the picket sign that you saw, where was it located with reference to the job?

A. Do you have a blackboard? Well, it was in the extreme northeast corner removed from the general site, however——

Q. Was it on an access road?

A. It was on an access road.

Q. Was it on the Bloomfield access road?

A. The northerly access road off Bloomfield.

Q. There were two, one is the north, one to the south? A. Correct. [110]

Q. Was the sign simply posted, or was there a picket carrying the sign?

A. There was a picket carrying the sign.

Q. Did you have any conversation with the picket?

A. No, other than Good morning. I mean, pickets were men that had worked on the job.

Q. They were men that had worked on the job?

A. Yes.



(Testimony of Olin Eugene Lesh.)

Q. So you knew the pickets? A. Yes.

Mr. Weil: I have no other questions of this witness.

Mr. Hildreth: I have no questions.

Cross-Examination

By Mr. Brundage:

Q. Mr. Lesh, is it? A. Lesh.

Q. Yes. Mr. Lesh, when did you say the picket first appeared on the Norwalk job?

A. As being posted, you mean——

Q. Now, when did a man with a picket first appear on the job?

A. On November 12th, to my knowledge.

Q. All right. Now, then, how many pickets or how many men engaged in picketing were there on this particular date? I am not talking about whether the men changed, how many people were engaged in picketing?

A. Well, what constitutes picketing, a man carrying a picket [111] sign, or a man just being there?

Q. Under the rules of this game, I get to ask the questions, you give the answers. If you don't understand me, you just tell me you don't understand the question and I will try to put it to you again. A. O.K.

Q. You don't understand what I mean. I thought that the counsel asked you if pickets appeared on the jobsite, I may have misunderstood what I heard

(Testimony of Olin Eugene Lesh.)

him say, asked of you, and I thought you said that, yes, pickets appeared on November 12th. Now, if you say that pickets appeared on November 12th, I am asking you how many appeared?

A. It was one man carrying a sign.

Q. All right. That is all I wanted to know. There was one man carrying a sign?

A. Yes.

Q. Where was he carrying the sign, sir?

A. On an access road north, north access road off of Bloomfield.

Q. And what relationship does that have in terms of geographical proximity to the gate that you testified was the main gate?

A. I don't understand.

Q. Well, I will see if I can make it a little clearer. As I understood your testimony before, I made a little [112] diagram here, and I may have gotten it wrong. I thought you said the main gate was located at the northeast corner of the project, am I wrong about that?

A. I think so, yes.

Q. You think I am wrong? A. Yes.

Q. Where is it located?

A. The main gate to the hospital grounds is on Norwalk Boulevard.

Q. I am sorry. I was talking about what I understood to be the main entrance through which the majority of the workers went to work on the project.

(Testimony of Olin Eugene Lesh.)

A. Well, that most commonly used entrance is the north access road off of Bloomfield. [113]

\* \* \*

Q. Do you know from your own knowledge whether there were any conversations between the picket and any of the other employees?

A. No.

Q. Were the number of pickets increased at any time? A. Not to my knowledge.

Q. Was the picketing confined to this one gate?

A. Yes.

Q. And I wonder if you could tell me this, Mr. Lesh—I am sorry. Strike that. Let me put the question this way.

First a preliminary question.

I take it that the work that Gardner Electric was doing was work of electrical nature, is that right?

A. Yes.

Q. All right. Now, where was the work that Gardner Electric was performing in relation to this, I think I referred to it as the main entrance, what I mean is the entrance through which most of the employees passed where the picket was placed, where was the work that Gardner Electric was doing with relation to that?

A. Oh, it was 1,500 or 2,000 feet away.

Q. In which direction?

A. Due west. [117]

Q. I am not sure that I understand the picture clearly with respect to the various access roads, but

(Testimony of Olin Eugene Lesh.)

was there an access road that was closer to the electrical work than the one on which the picket was placed?      A. Yes, I would say so.

Q. Where was that?

A. That is on the west side of the hospital.

Q. On the west side of the hospital. What access, what street does that run on?

A. Norwalk Boulevard.

Q. And about how far would that be, sir?

A. About the same distance.

Q. About the same distance?

A. Actually it is the same distance either way.

Q. Then I take it there is no other access road that is closer?

I am sorry. What I understand your testimony to be, at first you said that there was a road closer, and then as I understand it in response to my second question you say that both roads are approximately equi-distant?

A. Approximately the same from both. [118]

\* \* \*

### ROBERT B. McCLARY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Weil:

Q. Will you give us your full name, please, and your address?

A. Robert C. McClary. My residence is 9303

(Testimony of Robert B. McClary.)

Otto Street, Downey. My business address is 3321 Century Boulevard, Lynwood.

Q. What is your business or profession, Mr. McClary?

A. I am a partner in Hydro Company, a general engineering contracting firm.

Q. Who are the other partners?

A. I have one partner, his name is Burt A. Lowe, Jr.

Q. During the operation of the business of your company have you had occasion to do any work at the Cal State Polytechnic College, Kellogg Campus?

A. Yes. [119]

Q. What is the nature of your work there?

A. It is called mechanical work.

Q. Has it to do with the laying of pipe, and other work of that nature?

A. Yes, it has. [120]

\* \* \*

A. On the 18th of October a picket was placed at this location shown in the pictures.

Q. Did you have any conversation with that picket? A. Yes.

Q. Was there anyone else present during the conversation? A. Yes.

Q. Who?

A. Well, to clarify, we did talk to the picket almost every day, and my foreman was there.

Mr. Brundage: Hold it. I didn't know that was responsive to a particular question. He has asked



(Testimony of Robert B. McClary.)

him if he talked to the picket on a particular day, he said, yes; then the next [125] series of questions was who was there.

Trial Examiner: I thought that he had asked if he had spoke to the picket and he answered, yes; then he asked who was there, and the witness was explaining, well, I talked to the picket on many occasions, and on some occasion someone else was present.

Mr. Brundage: All right.

Q. (By Mr. Weil): Did the picketing have any effect on your job? A. Yes, it did.

Q. The work that you were doing, what effect did it have?

A. Well, it slowed our work down considerably.

Q. How did it do that?

A. My men wouldn't work on the pipeline while the picket was in this location. [126]

\* \* \*

Mr. Brundage: This is Mr. Devereaux.

Q. (By Mr. Weil): When was this conversation?

A. To the best of my knowledge, it would be in the first week of November. I don't remember the exact date.

Q. Will you tell us what was said by you, by Mr. Devereaux, by anyone who was present?

A. I attempted to find out in what manner we might proceed with our job, and I asked him if he was picketing our work, to which he replied, no.



(Testimony of Robert B. McClary.)

Then I asked him if he considered the part of our trench which was to be used by Paul Gardner for conduit unfair, to which he relied, yes.

Q. Is there anything else? A. Yes. [128]

Trial Examiner: Was there an answer?

(The record was read.)

The Witness: Then I asked him if we could proceed with the work after hours, or on Saturdays and Sundays when the picket was not there, and he said that that would be wrong. He also stated that if we proceeded with the work we knew that would happen to us. Not to us, we knew what would happen.

Q. (By Mr. Weil): Is there anything else that you recall?

A. That is the substance, as I recall it.

Q. Did you know what would happen in connection with the work? A. No.

Q. How much of the time were the pickets picketing at that time, were they picketing all day, do you know?

A. At the time of our conversation?

Q. Yes. A. Yes, they were.

Q. Do you know whether they were picketing after working hours?

A. They had started to that day.

Q. Do you know whether they picketed at all times after that day around the clock?

A. No, I don't know.

Q. Now, did the picketing continue after your

(Testimony of Robert B. McClary.)

conversation with Mr. Devereaux? A. Yes.

Q. Was there picketing every day thereafter, every working day? [129] A. Yes.

Q. Was Paul Gardner, or were Paul Gardner's employees present on the job every working day thereafter? A. No.

Q. Do you recall any specific day on which Paul Gardner's employees were not present?

A. To my knowledge, on October 31st, November 1st and November 4th, to my knowledge.

Q. On those days there was no Gardner employee present on the job, to your knowledge?

A. That is right; yes.

Q. Did the picketing continue during those, on those days? A. Yes.

Q. Did your employees work during those days?

A. Yes.

Q. Was there any cessation of work by your employees during those days? A. Yes.

Q. When did they work, and when did they not?

A. Well, they worked intermittently.

Q. Did you have some sort of a crisis at that time? A. We felt that we did have, yes.

Q. What was the situation?

A. We had about, oh, in excess of 7,000 feet of transite pipe in the ground, and we felt that if it should rain at that time [130] that we might, the pipe would float out of the ground, and we might lose our investment there.

Q. Did you do anything about that possibility?

A. I personally tried to by ordering my men to

(Testimony of Robert B. McClary.)

cover up the pipe, and some progress was made in that direction, however, the pipe was not covered at that time.

Q. Well, do you know, did your men refuse to work as you ordered them?      A. Yes. [131]

\* \* \*

Q. All right. Having specific reference to your shop steward, when did he first tell you?

A. The first day the picket appeared on this location.

Q. What did he tell you?

A. He told me that he couldn't cross the picket line.

Q. Thereafter did he speak to you about it?

A. Yes.

Q. On October 31st did he speak to you about it?

A. I don't know.

Q. You testified that on October 31st you tried to do something about this situation by telling the men to get the pipe covered. Did you have any talk after that with the shop steward?      A. Yes.

Q. Of that date?      A. Yes.

Q. Who else was present?

A. My superintendent and the inspector on the job.

Q. And was that on the jobsite that you had this talk?

A. At this location shown in the pictures.

Q. Will you give us the conversation that you had then?

(Testimony of Robert B. McClary.)

A. I don't remember the exact words, but I told them that we wanted to make a tie-in into the Metropolitan Water Department at this location, and that that was the only opportunity we [132] had to get water to fill the pipe, in case it should suddenly start to rain. So the shop steward said he would have to go call the union hall, which I assumed that he did. And when he came back he told me that the dispatcher had told him to make this tie-in under no circumstances.

Q. Thereafter was the tie-in made that day?

A. No.

Q. Or the next day?                      A. No.

Q. Did your men do any work that day, that is, the 31st of October, 1957?

A. Yes, some of the men did, some worked.

Q. Now, you said Gardner's employees were not present at that time, do you know why not?

A. I assume it was because I called Paul, Jr., and asked him not to have any men there that day.

Q. Now, do you know whether Gardner's employees were working anywhere else on the project at that time?

A. Not to my knowledge. [133]

\* \* \*

Q. (By Mr. Weil): Now, after you had taken the pictures which are General Counsel's Exhibit 4, was there any change in the picketing after you took those pictures?                      A. Yes.

Q. When did such change take place?

(Testimony of Robert B. McClary.)

A. Oh, about November 18th.

Q. What was the change that took place?

Mr. Brundage: Is this the same question that I raised this morning as to this change that took place?

Mr. Weil: No.

The Witness: Yes.

Mr. Brundage: Something that you are contending constitutes an unfair labor practice?

Mr. Weil: Yes, this is the different change than that.

Mr. Brundage: Oh, I am sorry.

Q. (By Mr. Weil): What was this change?

A. The picket was removed from this location.

Q. Did he go to another location? Was there picketing at [135] another location? A. Yes.

Q. Where?

A. To my knowledge there was a picket on the road leading into the campus from Old Valley Boulevard.

Q. Do you know what, if any, effect this change of picketing had?

A. Yes, it materially decreased the number of working men on the job.

Q. Did your men——

Mr. Brundage: Just a moment. Is he testifying to that from his own knowledge?

The Witness: Yes.

Mr. Brundage: Wait a minute. I didn't ask you. Counsel, is he?

Mr. Weil: I will answer yes, too.



(Testimony of Robert B. McClary.)

Mr. Brundage: Then I assume that you will lay some foundation?

Mr. Weil: I am going into it with respect to find out what he knows.

Trial Examiner: All right. Go ahead.

Q. (By Mr. Weil): Did you have men working at other parts of the job than that ditch shown in the picture, on November 18th, or around that time?

A. Yes. [136]

Q. What other parts of the job?

A. Near the Roundhouse.

Q. Where is that on the campus?

A. It is more or less on the boundary between the construction area, the main construction area and this general field area which is on the east part of the campus.

Q. Is that field a rough rectangle, roughly rectangular?

A. No, that wouldn't be a good way to describe it.

Q. Well, from the point at which you took that picture, in what direction is the main building which is being constructed?

A. It would be west and southwest.

Q. Did you have work done by the main building?

A. Yes.

Q. That you were doing at about, on November 18th, around that time?

A. Yes.

Q. What sort of work was that?

A. Pipeline work.



(Testimony of Robert B. McClary.)

Q. Did you have work to the north of the main building? A. Yes.

Q. Did your work take you all around the project?

A. Not into an area that I believe they call the stables area, but generally other than that.

Q. Where is the stable area located from the main buildings? [137]

A. I should say it is about due south of the Administration Building.

Q. And what direction are the main buildings from the Administration Building? I mean, the main buildings that are being constructed from the Administration Building? A. East.

Q. Now, in the area in which your men were **working**, were you, yourself, in and around this area daily? A. Almost every day.

Q. Now, on and immediately after November 18 were you in this area? A. Yes.

Q. Were other employer's employees working?

A. To my knowledge only two, only the men from two employers.

Q. Were your men working? A. No.

Q. Had your men ceased work because you had told them to? A. No.

Q. Had you told them to continue working?

A. Yes.

Q. Was the job largely shut down at that time?

A. I should say so, yes.

Mr. Weil: I have no other questions. [138]

(Testimony of Robert B. McClary.)

### Cross-Examination

By Mr. Brundage:

Q. Now, was he in close proximity to this ditch that appears in General Counsel's 4?

A. No, not—well, you will have to make the question a little more specific, I don't know what you mean by close.

Q. All right. Where was he in relationship to the ditch?

A. He was about 150 yards due east of the end of the main ditch down that field there.

Q. Was he on the campus property?

A. I don't believe so.

Q. Was the ditch on the campus property?

A. Yes.

Q. Was he as close as he could get to the campus property, that is, was he on the bank of the road just outside the campus [139-144] property?

A. Yes, by the fence.

\* \* \*

Q. All right. And did your men continue to work during that [145] three of four day period?

A. Yes.

\* \* \*

Q. Now, what happened when the picket moved insofar as your men were concerned?

A. They stopped work.

(Testimony of Robert B. McClary.)

Q. Now, did they stop work in the morning, or did they fail to report to work, or what took [146] place?

A. They were disinclined to work anywhere near the picket.

Q. Well, let me ask a little specifically about that, Mr. McClary, did they walk off the job?

A. No, they didn't. [147]

\* \* \*

Q. What I want to know is, if I understood your testimony, you correct me if I am wrong, what the superintendent in effect told you was, that the men didn't want to work on that part of the ditch near which Gardner employees were employed, is that substantially correct, or is that wrong?

A. That is substantially correct.

Q. All right. And then I take it that either one or two of two things happened, either you assigned them to some other part of the job and they continued to work, or they left the job?

A. They went home, that is correct.

Q. All right. Now, did they go home?

A. Yes.

Q. Was that—I am sorry, go ahead.

A. I don't want to say yes to, some men did on some days go home during the day.

Q. Some men left and went home some days during the day on their own accord without your telling them to do that?

A. Yes.

(Testimony of Robert B. McClary.)

Q. Other men continued to work, is that right?

A. Right, yes.

Q. Now, do we have an accurate picture of it? Some men left, [148] and some men continued to work. And was there implied in your answer, Mr. McClary, did I catch in your answer the fact that some men would come back and then they would work a little while, or a day or two or three, and then they would leave and they wouldn't come back the next day, then they would come back again, is that right?

A. That is correct.

Q. Is that right? A. Yes.

Q. Let me then just clarify this to see if we have the picture.

Some men just continued to work?

A. Yes.

Q. I mean, they just stayed right on the job at least all the way through October? A. Yes.

Q. All right. Other men left the job, but would come back and work? A. Yes.

Q. And would work some days, and then wouldn't show up on another day, and then maybe after one day or two days would come back and work again, is that right?

Understand, I am not trying to put any words in your mouth.

A. I know. To make it clear, I don't think anyone failed to show up on a given day. However, they did occasionally show up [149] and not go to work.

Q. You mean, they would report on to the job

(Testimony of Robert B. McClary.)

and then they would leave the job after they reported there?      A. Yes.

Q. All right. Now, this was the situation through October, at least until October 31st, is that right?

A. Yes.

Q. Now, these men continued to work, as I understand it, those who did work despite the fact the picket was there?      A. Yes.

Q. Now, did anything special occur on October 31st?      A. Yes.

Q. And now will you tell us again, Mr. McClary, what occurred?

A. Paul Gardner's men didn't show up that day.

Q. They didn't appear at all that day. Now, did your men appear?      A. Yes.

Q. And the picket at this time was still in close proximity to the ditch as shown on your picture, right?      A. Yes.

Q. Is that the day Gardner's men did not appear because you had phoned Paul Gardner, Jr., and told him not to come, is that why?

A. Yes, I believe that is right, that is the reason.

Q. Did your men come? [150]      A. Yes.

Q. Did they work in the ditch?

A. Not at this location.

Q. Was that because you were working them at a different location?      A. Yes.

Q. Now, then, do I understand, Mr. McClary, that on October 31st there were no employees working in that ditch where the picket was, is that right?

A. Not where shown on this picture here.



(Testimony of Robert B. McClary.)

Q. Well, yes. That they may have been working, your men may have been working at some distance?

A. Yes.

Q. Away? A. Yes.

Q. And approximately how far away again, would you estimate that, Mr. McClary?

A. About 2,200 feet.

Q. About 2,200 feet. [151]

\* \* \*

Q. Now, did you have any materials coming in during this period of time, October, November and December? A. Yes.

Q. And were those materials delivered?

A. Yes.

Q. And do I understand that insofar as materials that went to your company, or your operations are concerned on that job, that this is the only instance that you know of?

A. The only one I saw.

Q. The only one you saw. Well, my question is, do you know of any instance involving materials going to your company where those materials were stopped from coming on to the job? A. No.

Q. And, as I understand it, you were receiving materials during the months of October, November and December? A. Yes. [159]

\* \* \*



(Testimony of Robert B. McClary.)

Recross-Examination

By Mr. Brundage:

Q. As I understand it, despite these conversations that you had around October 18th, a portion of your crew continued to work, is that right?

A. Yes.

Q. And the remainder of the crew worked on a sort of intermittent basis, is that right? [168]

A. Yes.

\* \* \*

PAUL REVERE GARDNER, JR.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Weil:

Q. Will you give us your full name and address, please?

A. Paul Revere Gardner, Jr. The address is 576 Aspen Way, Upland, California.

Q. Were you here during the testimony given by Paul Gardner, Sr.?      A. I was.

Q. Are you the son to whom he referred as Paul Gardner, Jr.?      A. That is correct.

Q. You are a partner, I mean, not a partner, vice president of the Paul Gardner Company?

A. That is correct.

(Testimony of Paul Revere Gardner, Jr.)

Q. With specific reference to the job at the Kellogg Campus of the Polytechnic College, did you at any time after the picketing started withdraw your men from that job for any [169] period of time? A. Yes, sir.

Q. Do you recall when?

A. I haven't the exact date in my mind, although I have it in notes in our job file.

Q. Well, do you recall approximately when?

A. The approximate date is right at the end of October, or first of November.

Q. Were your men off that job entirely at that time? A. That is correct.

Q. Were they off the job entirely for more than one day?

A. We had more than one day in which we were off the job. The specific day that I believe you have reference to is the day on which Bob McClary called me just before starting time in the morning, he called and requesttd that we keep our men off the job in order that he could try to center-load the pipe and prevent it from being damaged because a heavy rain was forecast.

Q. Did you keep your men off the job that entire day?

A. Immediately after his telephone call I called the chief inspector on the job, informed him of our intention in order to protect Hydro. He agreed that it was a good idea. I called Bob back and informed him that we would have our men off the job.

(Testimony of Paul Revere Gardner, Jr.)

Q. What did you do with the men that you had scheduled to [170] work that day?

A. By the time these arrangements had been completed our crews had left, so we made work for those men in the shop for the balance of the day. On that particular day, incidentally, I had made plans to visit the site to check out certain portions of the work, but because of the circumstances involved, I did not visit the site in order to keep all our vehicles off the job on the day.

Q. Have you now, or are you now, or have you—strike that.

Have you at any time had any work to do at the part of the jobsite shown in the picture which is before you, General Counsel's Exhibit 4, that is, you or your men?

A. We have performed no work at all in the immediate vicinity of this site, although a portion of our contract will involve some work on a pole line in the immediate area, but that work has not been accomplished as yet.

Mr. Weil: I have no further questions of this witness at this time.

Mr. Brundage: I have no questions of this witness. [171]

\* \* \*

**LEROY DEVEREAUX**

a witness called by and on behalf of the Local Union, International Brotherhood of Electrical Workers, being first duly sworn, was examined and testified as follows:

**Direct Examination**

By Mr. Brundage:

Q. I wonder if you would give your name and address to the Reporter, Mr. Devereaux?

A. Leroy Devereaux, 15724 Rushford Street, Whittier, California.

Q. Mr. Devereaux, where are you presently employed?

A. International Brotherhood of Electrical Workers, Local Union 11.

Q. And in what capacity are you employed there, Mr. Devereaux?

A. Business representative.

Q. And are you assigned to any particular geographical area as a business representative of Local 11?

A. Yes, District 6 of Local Union 11.

Q. And I wonder if you would indicate the geographical [176] jurisdiction of District 6? Put it another way, what is the geographical area over which you are in charge as the business agent?

A. It is an area that is bounded on the west by Atlantic Boulevard, on the east by the Los Angeles County line, on the south by Rosecrans and Firestone, and on the north by Garvey and the moun-

(Testimony of Leroy Devereaux.)

tains. I don't know what the name of the mountains are to the north.

Q. All right. Now, you are familiar with the job, or a construction work that is taking place on the Kellogg Campus of the California State Polytechnic College?

A. Yes.

Q. Does that fall within the geographical jurisdiction over which you have as business agent?

A. Yes.

Q. Are you also familiar with some construction work that is taking place at the Metropolitan State Hospital in Norwalk, California?

A. Yes.

Q. Does that fall within the jurisdiction?

A. Yes.

Q. Of which you are business agent?

A. Yes.

Q. Mr. Devereaux, you were present here at the hearings yesterday, and there was testimony with respect to the fact [177] that Local 11 of the IBEW had established a picket line at the Kellogg Campus of the California State Polytechnic College sometime in the middle of October of 1957. Now, did you, Mr. Devereaux, have anything to do with respect to the establishment of the picket line at the Kellogg Campus?

A. Yes, I established the picket line, what we call Cal Poly.

Q. Cal Poly, yes.

A. Yes. On Friday, October 18th.

Q. All right. Now, when you say that you established the picket line on Friday, October 18th, that



(Testimony of Leroy Devereaux.)

is of 1957, of course, will you tell me what you did, Mr. Devereaux, that is to say, did you assign a member of the local union to picket out there?

A. Yes.

Q. And did the union have prepared for him a placard which he should carry?

A. That is right.

Q. And I show you——

First let me have it marked. I would like this marked, Mr. Trial Examiner.

Trial Examiner: That will be Respondent's Exhibit No. 1 for identification.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 1 for identification.) [178]

Q. (By Mr. Brundage): I show you Respondent's Exhibit 1 for identification and ask you to identify that sign? Is that the sign that the picket was given? A. Yes.

Q. And was this sign prepared by Local Union No. 11? A. Yes.

Q. And was there attached to this sign a post, or any kind of handle wherein the man could carry the sign? A. A piece of one by two wood.

Q. All right. With respect to the instructions that you gave to the picket, what did you tell him to do, Mr. Devereaux?

A. Are you referring to Cal Poly?

Q. Cal Poly, yes, sir.



(Testimony of Leroy Devereaux.)

A. The picket at Cal Poly was instructed to stand at the ditch across San Jose Road, next to the fence, and portray this sign. In other words, carry the stick on his shoulder so that anyone who was interested, particularly the people that we were trying to contact here could read the sign.

Q. Now, then, at the time that the picket was placed near the ditch, there were employees of Gardner Electric Company working in the ditch, is that right?

A. That is correct; yes, sir.

Q. Now, the area where the picket was told to stand or walk by you, as I understand it, was not in front of an [179] entrance into the campus, is that correct?

A. No. I mean, yes, it wasn't in front of an entrance to the campus.

Q. It wasn't in front of an entrance to the campus near the ditch?      A. Yes.

Q. Now, did employees working on the job site cross through this entrance?      A. No.

Q. They did not?      A. No.

Q. Now, as I understand it, Mr. Devereaux, there are various types of employees who do work in building construction employed on the campus job, is that right?      A. That is right.

Q. Were there carpenters employed there?

A. Yes.

Q. Engineers employed there?      A. Yes.

Q. Laborers employed there?      A. Yes.

Q. Plumbers employed there?      A. Yes.

(Testimony of Leroy Devereaux.)

Q. Any others that come to your mind?

A. Pipe fitters. [180]

Q. Pipe fitters? A. Cement finishers.

Q. Cement finishers.

As a matter of fact, there was another sub-contractor on the job who did electrical work other than Gardner Electric, isn't that right?

A. That is right.

Q. All right. Now, the entrances that these various craftsmen used to go onto the campus, were those—I am sorry, strike that.

You testified that this picket was instructed by you to stand near the ditch, and that there was also an entrance near that ditch which enabled persons to go onto the campus, is that correct?

A. No.

Q. Oh, all right.

A. No, the entrance at the ditch through the fence was to enable the employees that might be working on the ditch to have access to the ditch itself. In other words, where the ditch was that Gardner was working on was completely surrounded by fence, and at this particular ditch location there was an opening in the fence that they had access to this ditch that they were working on.

Q. I see. Now, the various other types of employees that you mentioned, carpenters, pipe fitters, engineers, laborers, [81] and all of the rest, they did not go through this entrance when they went onto the campus to perform work, did they?

A. No, they didn't.

(Testimony of Leroy Devereaux.)

Q. And you did not instruct your picket to go and picket at any of the entrances through which these employees went when they walked onto the campus, is that correct?

A. No, that is right.

Mr. Weil: May we have the time? Was that answering for all time?

Mr. Brundage: Yes, I am talking now—thank you.

Q. I am talking now initially——

A. (Interposing): When this picket was set up.

Q. When this picket line was set up, all right. Now, did you give any instructions to the picket with respect to whether he should tell employees to remain away from work?

A. The instructions we gave all pickets, that is, I gave all pickets concerned was to say nothing to no one. And if in their considered opinion as an emergency arose, arrived rather, that they couldn't handle, by not saying anything, to contact me by telephone.

Q. All right. Now, did you instruct any of your pickets to stop any trucks that might be coming onto the property with respect to making deliveries of materials? A. No.

Q. Did you instruct your pickets to ask the employees of [182] Gardner Electric Company to remain away from work? A. No.

Q. Did you have any conversations with the em-

(Testimony of Leroy Devereaux.)

ployees of Paul Gardner Electric Company prior to the establishment of the picket?      A. Yes.

Q. Will you tell us when those conversations took place, and with whom those conversations took place, if you can give me the names, and where those conversations took place?

A. This is in relation to Cal Poly?

Q. In relation to Cal Poly, yes, sir.

A. I had conversation with two employees of Gardner on Thursday, October 17th.

Q. All right.

A. ———that were involved with work alongside of the ditch. They were installing conduit that at a later date would be installed in the ditch, and I informed, or I checked them both to find out if they did belong to any union, of any description. They informed me that they didn't. And I asked them if they would like to join the IBEW, Local Union 11, and they said they had thought about it, but they didn't exactly know what to think at that time. So I advised them that the following day there would be a picket line set up on that ditch that they were working, if at any time they decided to join the IBEW we would appreciate it, and I gave them my card, [183] and also told them they could contact me through the picket by advising him that they wanted to see me. [184]

• • •

Q. Now, did you, yourself, have any conversations with employees of other contractors or sub-

(Testimony of Leroy Devereaux.)

contractors on the job with respect to remaining away from the job?      A. No.

Q. Do you know of your own knowledge?

A. With one exception, let me clarify that, with one exception.

Q. All right.

A. I did discuss with a Mr. McClary, I believe it is, with Hydro, that was the only exception.

Q. I am talking about employees.

A. Employees, O.K. I didn't know whether he was an employee or not.

Q. You did not have any conversations with any employees with respect to remaining away from the job?      A. No; no.

Q. Now, do you know from your own knowledge whether any of your pickets had any conversations, and I am now confining this to the Kellogg job, whether any of your pickets had any conversations with any employees with respect to remaining away from the job?

A. They were instructed not to, and as far as I know they [185] didn't have any [186] conversations.

\* \* \*

Q. All right. Now, did you have occasion in your capacity as business agent to go out to the job from time to time to observe what was taking place, Mr. Devereaux?      A. Yes.

Q. And, I take it, you were out the first day when the picket was established?      A. Right.



(Testimony of Leroy Devereaux.)

Q. On that particular day, Mr. Devereaux, do you know from your own knowledge, or rather from your observation, whether employees of other employers remained away from their work, or whether they continued to work?

A. I know of no employees, to my personal knowledge, that were off of the job because of the picket on the ditch.

Q. Well, let me put the question to you this way, Mr. Devereaux, did you observe employees going to work and working on the project despite the fact that there was a picket there?

A. Yes.

Q. And was that true of the various groups of craftsmen that you had reference to?

A. Yes.

Q. Carpenters?                   A. That is right.

Q. Engineers?                   A. Yes. [187]

Q. Laborers?                   A. Yes.

Q. Gardner, I don't mean Paul Gardner employees, but I understand there were some employees out there engaged in landscape gardening?

A. Yes, that is correct.

Q. They continued to work?                   A. Yes.

Q. The picket remained there, I think you said now until November 18th. Did you have just one picket at a time?                   A. One at a time.

Q. All right. Now, on or about November 18th, was there any change with respect to the picketing?

A. On November 18th we removed the picket from that location, and set up two pickets.

(Testimony of Leroy Devereaux.)

Q. Where did you place these pickets?

A. One picket was placed at the main entrance off of San Bernardino Freeway into Cal Poly campus, and the other picket was located on Old Valley Boulevard entrance to Cal Poly.

Q. All right. Now, will you tell me, Mr. Devereaux, why you changed the location of where the picketing took place?

A. The reason for changing the location of the picket was because of the fact that prior to November 18th, Paul Gardner employees had changed location as far as their work was [188] concerned. They had started to work up into what we call the middle area of the campus, and to verify it we went up and talked to the fellows on the job that were working, and there wasn't any other way in the world we could set a picket up at that location because there wasn't any location to set up, just like being out in the middle of a field. So, for that reason, the only thing we could do was set a picket up at the nearest accessible place that wouldn't interfere with the students and normal operations of the college itself.

Q. Then, do I understand, Mr. Devereaux, your testimony to be that when the employees of Gardner moved their location, you attempted to place your pickets in the closest proximity that you could to where the work was being performed by Gardner employees, is that right?

A. That is right.

Q. Now, when you placed the pickets at the

(Testimony of Leroy Devereaux.)

entrances, Mr. Devereaux, were you there on that particular day?      A. Yes.

\* \* \*

Q. When your pickets were moved to the other entrances, did you change your instructions with respect to whether they should ask employees to remain away from the job?      A. No. [189]

Q. Did you reiterate your instructions with respect to their not saying anything to any employees?

A. Yes.

Q. Did you, yourself, when you were at these entrances, ask any employees to remain away from the job?      A. No.

Q. Do you know from your own knowledge whether any of the pickets asked any of the employees to remain away from the job?

A. From what they told me, they didn't ask any of them at all.

Q. All right. And, I take it you know of no cases where the pickets did ask the employees to remain away from the job?      A. No, I don't.

Q. Now, on the days that you placed the picket at the entrances, I think you have testified that you were there?      A. Yes.

Q. Did employees remain away from the job and observe the picket line, or were there employees who continued to go to work on the project?

A. On the day I established the picket?

Q. Yes, sir, now I am talking now when the picket was moved to the two entrances?

(Testimony of Leroy Devereaux.)

A. The picket was moved in the middle of the day.

Q. All right. [190]

A. Of course, the men were working on the job already all over the job, and that was one of the reasons that we moved in the middle of the day.

Q. Because Gardner's employees were working?

A. Gardner employees and the rest of the trades were already on the job.

Q. Well, yes. But now, when you moved the pickets into the proximity of Gardner employees, did all of the, did the employees of the other crafts walk off the job?

A. Not to my knowledge, I don't know of any that walked off at that time.

Q. All right.

A. I was there at the gate, I don't remember any.

Q. All right. Now, as the employees returned to work, were there employees who walked through the picket line?

A. Yes.

Q. There were?

A. Yes.

Q. And were there some employees who did not go through the picket line?

A. Yes. [191]

\* \* \*

Q. Now, as I understand it, Mr. Devereaux, employees of these various crafts continued to work on the job even though there was a picket there?

A. Yes. [195]

\* \* \*

(Testimony of Leroy Devereaux.)

Q. (By Mr. Brundage): And there were men from these various crafts who went through the line and continued to work? A. Yes.

Q. Now, how long did this picket sign continue from November 18th on?

A. It was set up on November 18th, and was removed November 21st at 11:00 a.m.

Q. Now, Mr. Devereaux, was a different type of sign employed after that? A. Yes.

Mr. Brundage: And, first, I wonder, Mr. Trial Examiner, if we may ask that Respondent's Exhibit 1, No. 1 for identification, be admitted in evidence.

Trial Examiner: All right. Without objection——

Mr. Weil: No objection.

Trial Examiner: Respondent's Exhibit 1 for identification is received in evidence.

(The document heretofore marked Respondent's Exhibit No. 1 for identification was received in evidence.)

Q. (By Mr. Brundage): Now, I show you what I would like to have marked as Respondent's Exhibit No. 2, for identification. [196]

(Thereupon the document above referred to was marked Respondent's Exhibit No. 2 for identification.)

Q. (By Mr. Brundage): Now, Mr. Devereaux,



(Testimony of Leroy Devereaux.)

I ask you if this sign was—first, I ask you to identify it, what is this here?

A. This is a sign that was erected at the two entrances to Cal Poly that I mentioned a while ago off the freeway, and off the Valley Boulevard.

Q. This was a sign that was substituted for the sign that the union had existing prior thereto?

A. That is right. [197]

\* \* \*

Q. (By Mr. Brundage): Why was the second sign substituted?

Mr. Weil: Object, irrelevant and immaterial.

Trial Examiner: I will overrule the objection, you may answer.

The Witness: The reason for that was because we thought that possibly that this was causing a little bit of confusion at the gates.

Q. (By Mr. Brundage): Let me ask you the question, Mr. Devereaux, was it intended by the union when it placed the [198] first sign, Respondent's Exhibit No. 1, that employees other than Gardner Electric Company, or, let me rephrase that question.

Was it the intention when Respondent's Exhibit No. 1 were placed at the gate that employees of employers other than Gardner Electric Company should remain away from the job? A. No.

Q. And, as I understand it, Mr. Devereaux, had it been the intention of the union to do that in the first instance they would have placed the original

(Testimony of Leroy Devereaux.)

picket sign at entrances through which the other craftsmen went to work, is that correct?

A. That is right, yes.

Q. And this was not done originally, is that right?

A. That is right.

Q. And the only reason that the picket lines were moved because the work of Gardner employees changed, is that right?

A. That is correct.

Q. As I understand it, as I understood your testimony, Mr. Devereaux, subsequent to the placing of the pickets at the main entrances of the gate, some employees remained away from the job of the other crafts, and some did not, is that correct with respect to your testimony?

A. Let us have that again.

Q. All right. When on November 18th the pickets were [199] placed at the two gates that you mentioned, insofar as the other crafts were concerned, some employees observed that picket line, and some did not observe the picket line, is that correct, speaking now of employees of other crafts?

A. Some did and some didn't.

Q. Yes, sir.

A. That is from the reports that I received. I didn't see any that didn't show up, all I saw was the ones that did show up.

Q. All right. You saw the ones that went to work?

A. That is right. [200]

(Testimony of Leroy Devereaux.)

Q. (By Mr. Brundage): Now, as I understand it, and I think the record shows this, during the week did some of the employees remain away from the work, other employees other than Gardner Electric?

A. Yes.

Q. Do I understand your testimony to be that that is why the union changed the sign so there could be no question that the union was not attempting to induce employees of other employers to remain away from the job, is that right?

A. Yes. [201]

\* \* \*

Q. All right. Now, then, will you tell us who said what, as best you recollect?

A. At the time McClary asked if there is anything that he could do, or anything that we could do in respect to removing the pickets for the benefit of his operation. And I advised him that as far as the pickets were concerned, that I intended to have a picket there to try and organize Gardner's employees as long as they were on the project. And he asked me if I could remove them long enough for him to get his work done and come back with them again, and I told him, no, that we didn't operate that way, that we were trying to organize their employees, and trying to have someone there that they could contact if they felt like joining the IBEW. Then he talked to Ed Rogers, the plumbers business agent, and asked him what he could do.

\* \* \*

(Testimony of Leroy Devereaux.)

A. And he talked to Ed Rogers, the Plumbers' business agent, and asked Ed what he could do about the job in relation to his work, and Ed says, "I can't do a thing in the world about it, the electricians have the picket line set up to organize Gardner's employees, and that is it."

Q. That was the totality of the conversation, as you [205] recall it?

A. Except, of course, that McClary asked me along with Rogers if we could do something about his people in respect to picket line, and we told him we didn't have any concern with his people one way or another, they could work or not work, that was their prerogative, and I had no bearing on them whatsoever.

Q. There was nothing else in the conversation?

A. Yes, there was. When Clary suggested that fact that he was more or less caught in the middle, so to speak, because he had this job that was concerned with Gardner's operation also in the same ditch, and Rogers advised him that this wasn't something that just happened yesterday, he had known about this a long time ago, about the possibility of having union men and non-union men working in the same ditch at the same time. That was between McClary and Rogers, but I observed it, I overheard it. [206]

\* \* \*

The Witness: Yes, there is one item here that Clary was talking to Rogers about, about the—you want me to go ahead and explain this?

(Testimony of Leroy Devereaux.)

Mr. Brundage: Sure; sure.

The Witness: About the advisability of having his men sneak in after 4:30 when the picket left.

Mr. Brundage: Was this McClary asking Rogers?

The Witness: That is right.

Mr. Hildreth: In your presence?

The Witness: That is right.

Mr. Hildreth: Continue.

The Witness: And he was advised by Rogers, as far as he was concerned, the picket was a picket, that is all there was to it, there wasn't any time on it because of the fact [207] that it was just a picket, I mean, there is no set time on it, whenever Gardner's employees were there, that is when it established.

\* \* \*

Q. (By Mr. Brundage): All right. Now, Mr. Devereaux, directing your attention now to the Norwalk job, did you similarly have charge of the placing of the picket there? A. Yes.

Q. And will you tell me when the picket was placed on the Norwalk job? [208]

A. I can't by looking at the notes. I don't know the exact date by memory.

Q. I don't think there is any real question about this, at least I think we are in a substantial agreement with the testimony that was adduced by counsel with respect to the time. And is it right that a picket line was placed there on or about November 12, 1957? A. Yes; yes.



(Testimony of Leroy Devereaux.)

Q. All right. Now, will you tell me, did you, yourself, take the picket out and show him where he was to picket? A. Yes.

Q. All right. Will you tell us where that was?

A. The picket was advised to walk the picket line at the designated construction gate entrance to the project at Norwalk Metropolitan Hospital on Bloomfield.

Q. All right. Now, will you tell us why you picketed at the gate that you did?

A. Because I was advised by, what's his name, this fellow that was in here yesterday, Lesch, the construction superintendent, that that was a designated construction gate to be used by all construction workers for all construction work on the job.

Q. I think Mr. Lesch testified yesterday that this particular access road where the picket line was placed, the closest road to where the construction in which Gardner [209] Electric employees were engaging, is that correct?

A. It was the closest road, yes.

Q. All right. Now, then, was the same placard used that appears as Respondent's Exhibit No. 1?

A. Yes.

Q. And was there one picket?

A. One picket, yes.

Q. And what instructions did you give the picket on the Norwalk job? [210]

\* \* \*

Q. (By Mr. Hildreth): Well, getting back to

(Testimony of Leroy Devereaux.)

the original date that the picket was established, was it your intention not to bother any other union employees from working on that job?

A. Was it my intention not to bother any employees with this picket?

Q. To not to prohibit them from working?

A. That is right.

Q. That was your intention?

A. To not stop them from working, that is right.

Q. To whom did you convey that information?

A. To whom did I convey it to?

Q. Yes.

Mr. Brundage: Just a moment. I am going to object to that.

Q. (By Mr. Hildreth): Did you convey that information?

Trial Examiner: Wait a minute. Let us not both talk at once. You are both lawyers. When one is talking, the other doesn't interrupt. Now make your Statement.

Mr. Brundage: All right, sir. I have an objection to the [229] question on the grounds that it is too broad in its nature. It doesn't lay any foundation. If counsel wants to ask him if he talked to specific persons, to employees, I think he is entitled to ask him that question, but to ask him to whom did you talk about this subject, which may go into anyone from his wife to his lawyer, to his boss, to anyone else, seems to be pretty broad in scope.

(Testimony of Leroy Devereaux.)

Trial Examiner: I don't know that the question was that broad.

Mr. Hildreth: I will reframe it, Mr. Trial Examiner.

Trial Examiner: All right.

Q. (By Mr. Hildreth): Did you convey that information to anyone, and my question is to be answered yes or no?

A. I don't even know what the question is now.

Q. Did you convey the information that it was not the intention of Local Union 11 to prohibit any other union employees from working to anyone?

A. Yes.

Q. And did you convey that to any union officials? A. Yes.

Q. To whom?

A. Well, this Plumbers' business agent for one.

Q. I see. A. Rogers.

Q. And did you convey that information to Mr. McClary? [230] A. I sure did.

Q. What did you say to him at that time?

A. I told McClary that the meeting we had with him, that it wasn't our intention to keep anyone from working on the job, or asking anyone to leave the job. [231]

\* \* \*

Trial Examiner: Was the sole purpose of the picket out there shown in General Counsel's Exhibit 4-B to contact the Gardner employees?

The Witness: No, the purpose of the picket line

(Testimony of Leroy Devereaux.)

there was to organize them, by that I mean have the picket set up in such a way that these men working with Gardner recognized it as a union line, or man that they could contact if they wanted to get in touch with me.

Q. (By Mr. Hildreth): Did you tell Mr. McClary that you regarded it as a 24-hour picket line?

A. Because it could be subject to being put up, oh, any time during the 24 hours if Gardner employees were there to work.

Q. When Mr. McClary requested permission to sneak in after 4:30 when the picket left, you told him that you regarded it as a 24-hour picket line, didn't you? A. That is right. [234]

Q. You knew that Gardner didn't have any employees working after 4:30, didn't you?

A. No, I didn't.

Q. Did you make any attempt to find out when Mr. Gardner's employees were working?

A. Did we make any attempt to find out when they were working?

Q. That is correct.

A. No, other than check the job that they were working and so on to see if they were working.

Q. Weren't you advised that Mr. Gardner's employees weren't going to work on the 31st of October, 1957?

A. Was I advised that they weren't going to work?

Q. Yes. A. No.

(Testimony of Leroy Devereaux.)

Q. Were you advised that they were not going to work on November 1st, 1957?

A. No, I was never advised that they weren't going to work by anyone.

Q. The same is true for November 4, 5 and November 6?      A. Any dates; any dates. [235]

\* \* \*

Q. And give us the conversation on the phone that you recall. [245]

A. In effect I believe that at that time Mr. McClary asked me if he could go in there and go to work.

Q. What did you say?

A. I said sure, as far as I am concerned, he could. On the telephone I am talking about now.

Q. And what did he say?

A. I don't know now. I can't remember what he said verbatim, word for word, or anything of that type, except the fact that there was a picket there. And I advised him the picket didn't mean anything as far as he was concerned, or as far as I was concerned it was strictly to organize the employee of Gardner, that was all. In fact, what kind of surprised me in a way about the whole thing was the fact that they had never stopped work, Hydro hadn't.

Q. Why did that surprise you?

A. Surprised that he would call to me and advise me that the picket had something to do [246] with it.

\* \* \*



Mr. Brundage: As a result of the off-the-record discussion, it is my understanding that the parties would stipulate to a procedure wherein respondents will read into the record what appears on Respondent's Exhibit No. 2, and then we will request leave to withdraw Respondent's Exhibit No. 2.

Trial Examiner: All right.

Mr. Brundage: This appears on a sign that is 30 by 48 inches, and the following appears on the sign:

"Notice to Union Employees: Gardner Electric is non-union. Local Union 11, IBEW Electricians, is trying to organize Gardner Employees. This is not a picket line, union employees continue to [259] work."

\* \* \*

Mr. Brundage: Respondent's Exhibit No. 1 reads as follows:

"To Employees: Paul Gardner Electric Company is non-union. Join LU 11-IBEW-AFL-CIO. This is an organizational picket line."

\* \* \*

Received February 12, 1958. [260]

United States Court of Appeals  
for the Ninth Circuit

No. 16392

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION  
No. 11, AFL-CIO,  
Respondent.

CERTIFICATE OF THE NATIONAL  
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.92, Rules and Regulations of the National Labor Relations Board, Series 7, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, and known upon its records as Case Nos. 21-CC-281 and 21-CC-282. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Wallace E. Royster on Janu-

ary 27 and 28, 1958, together with all exhibits introduced in evidence.

2. Copy of Intermediate Report and Recommended Order issued by Trial Examiner Royster on March 31, 1958 (annexed to item 4, hereof).

3. Respondents' Exceptions to the Intermediate Report received April 23, 1958.

4. Copy of Decision and Order issued by the National Labor Relations Board on August 13, 1958.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 13th day of April, 1959.

[Seal]      /s/ FRANK M. KLEILER,  
Executive Secretary, National  
Labor Relations Board.

[Endorsed]: No. 16392. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO, Appellee. Transcript of Record. Petition to Enforce an Order of the National Labor Relations Board.

Filed April 14, 1959.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

[Title of Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO, its officers, representatives and agents.

The consolidated proceeding resulting in said order is known upon the records of the Board as Case Nos. 21-CC-281 and 21-CC-282.

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on August 13, 1958, duly stated its findings of fact and conclusions of law,



and issued an Order directed to the Respondent, its officers, representatives and agents. On the same date the Board's Decision and Order was served upon Respondent by sending a copy thereof post-paid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board and requiring Respondent, its officers, representatives, and agents to comply therewith.

/s/ THOMAS J. McDERMOTT,  
Association General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of March, 1959.

[Endorsed]: Filed March 6, 1959.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-  
MENT OF AN ORDER OF THE NA-  
TIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Respondent International Brotherhood of Elec-  
trical Workers, Local Union No. 11, AFL-CIO, an-  
swering the Petition for Enforcement of an Order  
of the National Labor Relations Board **entered in**  
said proceeding of the Board known as Case Nos.  
21-CC-281 and 21-CC-282, respectfully shows as  
follows:

1. Respondent admits the allegations of para-  
graph (1) of the Petition.

2. Answering the allegations of paragraph (2)  
of the Petition, Respondent admits the allegations  
contained therein, but in addition thereto, alleges  
that the Order of the National Labor Relations  
Board was based on erroneous findings and fact  
and was not based on substantial evidence in the  
record for sustaining the finding that Respondent  
engaged in unfair labor practices within the mean-  
ing of Section 8 (b) (4) (A) of the Labor Man-  
agement Relations Act of 1947, or any other unfair  
labor practices within the meaning of said Act.

Respondent further alleges that the National  
Labor Relations Board erred in its Conclusions of

Law in that it misinterpreted and misapplied the provisions of the Labor Management Relations Act of 1947 in its Findings and Conclusions that Respondent International Brotherhood of Electrical Workers, Local Union No. 11, engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Labor Management Relations Act of 1947, or any other unfair labor practices within the meaning of the Labor Management Relations Act of 1947.

3. Respondent admits the allegations of paragraph (3) of the Petition.

Wherefore, Respondent prays that this Court make and enter its Decree dismissing this proceeding.

TOBRINER, LAZARUS, BRUNDAGE & NEY-  
HART,

By /s/ ALBERT BRUNDAGE,  
Attorneys for Respondent.

Dated at Los Angeles, California, this 19th day  
of March, 1959.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 21, 1959.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH  
PETITIONER INTENDS TO RELY

In this proceeding, the petitioner, National Labor Relations Board, will urge and rely upon the following point:

1. The Board's finding that respondent violated Section 8 (b) (4) (A) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, et seq.), by inducing and encouraging the employees of neutral employers to engage in a concerted refusal to perform services for their several employers, with an object of requiring the State of California, other employers and persons to cease doing business with Paul Gardner, or Paul Gardner Corporation is supported by substantial evidence on the record as a whole.

MARCEL MALLET-PREVOST,  
Assistant General Counsel, National Labor Relations Board.

Washington, D. C., April 13, 1959.

[Endorsed]: Filed April 14, 1959.





No. 16392

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**In the United States Court of Appeals  
for the Ninth Circuit**

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**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

*v.*

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL UNION No. 11, AFL-CIO, RESPONDENT**

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**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL  
LABOR RELATIONS BOARD**

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**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

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**STUART ROTHMAN,**

*General Counsel,*

**THOMAS J. McDERMOTT,**

*Associate General Counsel,*

**MARCEL MALLET-Prevost,**

*Assistant General Counsel,*

**DUANE B. BEESON,**

**CHRISTOPHER J. HOEY,**

*Attorneys,*

*National Labor Relations Board.*

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**FILED**

**SEP 23 1959**

**PAUL P. O'BRIEN, CLERK**

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## Statute:

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Section 10(e)-----	1

# **In the United States Court of Appeals for the Ninth Circuit**

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No. 16392

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL UNION No. 11, AFL-CIO, RESPONDENT

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ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL  
LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## **JURISDICTION**

This case is before the Court upon petition of the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Sec. 151 *et seq.*),<sup>1</sup> for enforcement of the Board's order issued on August 13, 1958, against the International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO, hereafter called the Union. The Board's Decision and Order are reported at 121 NLRB No. 65 (R. 17-20).<sup>2</sup> This Court has jurisdiction of the proceed-

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<sup>1</sup> The relevant provisions of the Act are set forth in the Appendix to this brief, *infra*, pp. 19-20.

<sup>2</sup> References to the printed record are designated "R". References preceding a semicolon are to the Board's findings; those following the semicolon are to the supporting evidence.

ing, the unfair labor practices having occurred near Ontario, California.<sup>3</sup>

#### STATEMENT OF THE CASE

In brief, the Board found that the Union, in the course of its efforts to organize the employees of Paul Gardner Corporation, violated Section 8(b)(4)(A) of the Act by its picketing activities at construction sites where employees of Gardner and other contractors were at work. The picketing was found to have been directed at the employees of such other contractors for the purpose of inducing work stoppages by them in order to force the State of California and other employers and persons to cease doing business with

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<sup>3</sup> Paul Gardner Corporation, whose business primarily was affected by the Union's unfair labor practices, performed services and furnished supplies in 1957 valued in excess of \$100,000 for interstate highways constructed by the State of California and for various interstate businesses (R. 5, 6, n. 1). Although not contesting the sufficiency of this amount of interstate business to establish the Board's jurisdiction under the Act, the Union contended before the Board that the evidence in this respect related to a period in which Paul Gardner conducted his business as an individual proprietor, and therefore did not warrant the assertion of the Board's jurisdiction over the corporation. Gardner transformed his business into a corporation from a proprietorship during the same period that the unfair labor practices occurred, so that the available interstate commerce data necessarily covered the pre-corporation period of the business (R. 22, 27). Since the business continued in the same manner notwithstanding the change in form, the 1957 operations are plainly relevant to establish the Board's jurisdiction in this case. .

The Union's further contention before the Board that, as a discretionary matter, the Board should have declined to assert jurisdiction is precluded by this Court's decisions in *N.L.R.B. v. Daboll*, 216 F. 2d 143, 144 (C.A. 9), certiorari denied, 348 U.S. 917, and *N.L.R.B. v. Jones Lumber Co.*, 245 F. 2d 388, 390-391 (C.A. 9).

Gardner. The underlying facts upon which these findings rest may be summarized as follows:

**I. The Board's findings of fact**

**A. The nature of Gardner's business**

Paul Gardner Corporation is an electrical contractor, and maintains an office and warehouse in Ontario, California, as its principal place of business (R. 5; 28-29). Its employees report there for work daily before 8:00 a.m., at which time they receive their job assignments for that day (R. 9; 31). They obtain the tools and equipment they will need on their assignments and are then driven in company trucks to the various job sites where Gardner has contracted to perform electrical services (R. 9; 34). At the end of the work day they return to the warehouse in Ontario where time cards for each day are made out (R. 9; 32). In the normal course of business the employees do not come back to the warehouse during the work day, except for occasions when additional equipment is required at a job site (R. 35).

**B. The picketing of the construction work at California State Polytechnic College**

On October 1, 1957, Gardner began work on electrical installations on the campus of California State Polytechnic College, near Pomona, California (R. 7; 23). The job called for laying conduit in a pipeline ditch which was being dug by employees of Hydro Company, a general engineering contractor (R. 7; 24, 47). On October 17, Leroy Devereaux, the Union's business agent, arrived at the construction area and asked two of Gardner's employees whether



they belonged to a union (R. 70). Upon receiving a negative answer, Devereaux invited the men to join the Union, and "advised them that the following day there would be a picket line set upon on that ditch that they were working, if at any time they decided to join the [Union] we would appreciate it \* \* \*" (R. 70).

In accordance with Devereaux's statement, a Union picket appeared at the site on the next day, October 18 (R. 7; 66-67). The picket patrolled an area where the construction ditch intersected with a campus road, and carried a sign which read (R. 7; 66-67, 87):

To employees: Paul Gardner Electric Company is non-union. Join LU 11-IBEW-AFL-CIO. This is an organizational picket line.

The picket was instructed by the Union "to say nothing to no one," and if any question arose that he "couldn't handle by not saying anything, to contact [Devereaux] by telephone" (R. 69).

Upon the picket's arrival, the employees of Hydro Company, who were union members, refused to work on the pipeline at any point along the ditch from which the picketing was visible (R. 7; 48). Since a substantial section of the ditch was in view of the picket, Hydro's progress in laying pipe was seriously impeded (R. 7; 48, 50-51). In the first week in November, 1957, Robert McClary, a Hydro Company partner, inquired of Union agent Devereaux whether Hydro employees could work unmolested on weekends or in the evenings, when Gardner's employees were not on the job (R. 7-8; 48-49). Devereaux, however, responded by stating that it was a 24 hour picket line, and that if Hydro employees worked at such

times McClary "knew what would happen" (R. 8; 49, 85). Devereaux also told McClary that Hydro was not being picketed, but that he considered any "part of [the] trench which was to be used by Paul Gardner for conduit unfair:" (R. 49). The business agent of the Plumbers Union, which represented Hydro's employees, was also present at the time, and told McClary that "as far as he was concerned, the picket was a picket, that \* \* \* there is no time set on it \* \* \*'" (R. 81).

On three separate days during the picketing, McClary requested Gardner to withdraw his employees to enable Hydro to finish work in the vicinity of the picketing, and on each occasion Gardner complied (R. 8; 50, 62-63). Even though none of Gardner's employees were on the job on these occasions the picketing continued (R. 8; 50). In view of the absence of Gardner's employees McClary requested the Union steward working for Hydro to authorize Hydro's employees to make a tie-in to the main water lines, which would secure the new pipeline against damage in the event of rain before the completion of the job (R. 52). The steward in turn called the union hall, but reported that "under no circumstances" could the tie-in be made (*ibid.*).

Some time in the middle of November, Gardner substantially completed laying the conduit in the area of the picketing and transferred most of its operations to another part of the campus. Accordingly, on November 18, the Union ceased its picketing at the pipeline ditch and, unable to place pickets on a public street at the new work area, the Union commenced

picketing at the two main gates of the campus (R. 8; 72-73). Different signs were used at the new picketing site. These read (R. 76-77, 87):

Notice to Union Employees: Gardner Electric is non-union. Local Union 11, IBEW Electricians, is trying to organize Gardner Employees. This is not a picket line, union employees continue to work.

The closer of the two gates picketed was approximately one half to three quarters of a mile away from where Gardner's men were working (R. 38). When the pickets took these positions, many employees of other contractors at work on the campus refused to cross the picket line and construction work on the campus was "largely shut down" (R. 8; 53-55). Picketing finally stopped altogether on November 21, 1957 (R. 8; 76).

#### C. The picketing at the Metropolitan State Hospital

During the same period that Gardner was completing work on the California State Polytechnic College, its employees were also installing electrical service at the Metropolitan State Hospital in Norwalk, pursuant to a contract with the State of California (R. 8; 22-23). Beginning on November 12, 1957, and for a period of 9 days thereafter, the Union placed a picket at the employee entrance to the hospital (R. 8-9; 39-40). The picket sign carried the same legend as that used from October 18 to November 18 at the pipeline ditch (R. 82, 87, see p. 4, *supra*). Throughout the period of the picketing most of the employees working for other contractors at the hospital project refused to cross the picket line (R. 8-9; 39, 42). The picketing,

as well as the work stoppage, continued even during a day in this period in which Gardner's employees were not on the job (R. 40-41). The picket was removed on November 21, and on the following day the employees of other contractors returned to their work (R. 39, 42).

## II. The Board's conclusions and order

Upon the foregoing facts and the entire record, the Board concluded that the Union violated Section 8(b)(4)(A) of the Act by inducing and encouraging the employees of contractors other than Gardner to engage in work stoppages, with an object of forcing or requiring the State of California and other employers and persons to cease doing business with Gardner.

The Board's order (R. 18-20) requires the Union to cease and desist from engaging in the unfair labor practices found, and to post the appropriate notices.

### SUMMARY OF ARGUMENT

The ultimate question in applying Section 8(b)(4)(A) to situations where picketing is carried on at the place of business of employers who are neutral to the labor dispute, but at a time when employees of the employer primarily involved are present to perform work, is the purpose of the picketing. If the picketing union intends only to confine its activity to the primary employees and employer, no violation occurs; if a purpose is to induce neutral employees to engage in work stoppages, and thereby cause a disruption of business relations between the primary and neutral employers, the violation is established. Determina-



tion of the picketing union's purpose is an evidentiary question. It turns upon a consideration of all the circumstances that fairly bear upon whether the union conducts the picketing "with restraint consistent with the right of neutral employers to remain uninvolved in the dispute," or whether the union means to put additional economic pressure upon the primary employer through the involvement of neutrals. *Retail Fruit & Vegetable Clerks v. N.L.R.B.*, 249 F.2d 591, 599 (C.A. 9).

The Board's conclusion that the picketing in the instant case was carried on with an unlawful secondary purpose is fully supported by the following circumstances:

- 1) The picketing occurred on occasion at times when none of Gardner's employees was present. Such picketing was not only unlawful of itself, since the only justification for picketing away from the primary employer's place of business is the presence of his employees, but reflects an overall disposition to reach neutral employees irrespective of whether Gardner's employees were also in the area of the picketing.

- 2) Gardner's warehouse in Ontario was available to the Union as a place for picketing where it could reach the primary employees when they reported to and from work daily. The Union's decision to picket at common work sites rather than at Gardner's warehouse evinces a secondary purpose.

- 3) The Union's business agent made clear in his conversation with Hydro Company's partner, a neutral in the dispute, that the picketing would continue



so long as Hydro's employees were at work whether or not Gardner's employees were on the construction situs.

4) The legend on the picket sign used during the major part of the picketing did not make clear to neutral employees that they were not being requested to honor the picket line.

5) The Union made no attempt, although the circumstances called for clarification, to inform neutral employees that no appeal to them was being made by the picket line.

6) Work stoppages by neutral employees in fact resulted from the picketing. In the circumstances of this case, such stoppages were foreseeable, and in the absence of any steps taken by the Union to avert them, indicate a purpose that they were intended.

In combination, the foregoing considerations fully establish the secondary, and therefore unlawful purpose of the Union's picketing in this case.

#### ARGUMENT

**Substantial evidence supports the Board's finding that the Union's picketing at the construction sites violated Section 8(b)(4)(A) of the Act**

##### A. The controlling principles

Section 8(b)(4)(A) of the Act, so far as relevant here, provides that it shall be an unfair labor practice for a union or its agents—

\* \* \* to engage in, or to induce or encourage the employees of any employer to engage in, a strike or concerted refusal in the course of their employment \* \* \* to perform any serv-

ices, where an object thereof is: (A) forcing or requiring \* \* \* any employer or other person \* \* \* to cease doing business with any other person.

This Section spells out two prerequisites for the finding of a violation. First, the labor organization must be found to have engaged in, or to have induced the employees of an employer to engage in, a strike or concerted refusal in the course of their employment to perform services. Second, it must be found that "an object" of that conduct is to require the cessation of business relations between the employer and any other person.<sup>4</sup>

The applicability of the Section is relatively simple where a union engages in picketing at a place where the only employees at work are employed by an employer who is entirely neutral to the dispute which prompts the picketing. Such activity, standing by itself, can only be designed to induce work stoppages by such neutral employees and thereby force a cessation of business between their employers and the employer primarily involved in the labor dispute, all of which it is the purpose of Section 8(b)(4)(A) to forbid. See, e.g., *I.B.E.W. Local 501 v. N.L.R.B.*, 341 U.S. 694, 696-697, 699-700; *Printing Specialties Union v. LeBaron*, 171 F. 2d 331 (C.A. 9), certiorari denied 336 U.S. 949. On the other hand, it is similarly well settled that Congress did not mean by Section

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<sup>4</sup> The fact that the conduct may also have other and legitimate objects does not preclude the finding of a Section 8(b)(4)(A) violation. *N.L.R.B. v. Denver Building & Construction Trades Council*, 341 U.S. 675, 689.

8(b)(4)(A) to proscribe traditional primary picketing at the place of business of the employer directly involved in the labor dispute. See *Retail Fruit & Vegetable Clerks v. N.L.R.B.*, 249 F. 2d 591, 594, 599 (C.A. 9); *Local 618, Automotive Union v. N.L.R.B.*, 249 F. 2d 332 (C.A. 8). The treatment of these extreme situations under this provision reflects the accommodation which Congress intended to make between the “dual \* \* \* objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in private labor disputes and of shielding unoffending employers and others from pressures in controversies not their own.” *N.L.R.B. v. Denver Building & Construction Trades Council*, 341 U.S. 675, 692.

Where the picketing occurs at a situs where employees of both the primary employer and of other employers are at work, as with the major part of the picketing in the instant case, the problem is more difficult. This Court has dealt with such a problem in *Retail Fruit & Vegetable Clerks v. N.L.R.B.*, 249 F. 2d 591, and as is there made clear, the inquiry in this kind of case is to the purpose of the picketing. 249 F. 2d at 597-599. See also *N.L.R.B. v. Laundry Drivers Local 928*, 262 F. 2d 617, 619 (C.A. 9). If the picketing is directed, even in part (see n. 4, *supra*) at the involvement of neutral employees through work stoppages, and of their employers through the cessation of business with other persons, the violation is established. To be free from the proscription of Section 8(b)(4)(A), picketing at a common work situs must be conducted “with restraint

consistent with the right of neutral employers to remain uninvolved in the dispute.” *Retail Fruit & Vegetable Clerks* case, *supra*, 249 F. 2d at 599.

This question is essentially evidentiary. Its resolution turns upon a consideration of all the circumstances that fairly bear upon whether the picketing union meant to confine its activity to the primary employees and employer, or meant to put additional economic pressure upon the primary employer through the involvement of neutrals. See *N.L.R.B. v. Laundry Drivers Local 928*, 262 F. 2d 617, 619. See also, *N.L.R.B. v. Associated Musicians*, 226 F. 2d 900, 904 (C.A. 2), certiorari denied 351 U.S. 962; *N.L.R.B. v. Truck Drivers Local 728*, 228 F. 2d 791, 796–797 (C.A. 5). We turn, then, to the evidence in the instant case, and show that the record fully supports the Board’s conclusion that the Union’s picketing was directed at the intercession of neutrals in the primary dispute, and thus constituted a violation of Section 8(b)(4) (A) of the Act.

**B. The Board’s finding that the purpose of the construction site picketing was to induce secondary activity is amply supported by the evidence**

As this Court has observed, the normal implication of a picket line is an appeal to fellow employees to engage in work stoppages in support of the picketing union. *Printing Specialties Union v. LeBaron*, 171 F. 2d 331, 334, certiorari denied, 336 U.S. 949. As explained by the Court (171 F. 2d at 334):

The reluctance of workers to cross a picket line is notorious. To them the presence of the line implies a promise that if they respond by refusing to cross it, the workers making the



appeal will in turn cooperate if the need arises. The converse, likewise, is implicit. "Respect our picket line and we will respect yours."

See also, *N.L.R.B. v. Laundry Drivers Local 928*, 262 F. 2d 617, 620 (C.A. 9).

Rather than making any effort to neutralize the secondary implication of the picket line in the instant case, the actions of the Union, as shown by the combination of circumstances enumerated below, confirm that from its inception the picketing was intended to have its normal meaning and effect.

1. As stated *supra*, p. 5, picketing occurred on three occasions at the California State Polytechnic College campus and once at the State Hospital at times when no employees of Gardner were present. The picketing in these instances was clearly violative of Section 8(b)(4)(A), for the only conceivable justification for construction situs picketing—the presence of primary employees—was lacking. See pp. 10–11, *supra*. See also *N.L.R.B. v. Service Trade Chauffeurs*, 199 F. 2d 709 (C.A. 2). Moreover, the significance of the continued picketing during the absence of Gardner's employees is not limited to a finding of a violation during those periods, but reflects an overall purpose to picket so long as neutral employees could be reached.

Before the Board the Union sought to excuse these instances of secondary picketing on the ground that it was unable to distinguish neutral employees from Gardner's employees from those of neutral contractors. But this explanation reveals only that the Union made no effort to identify Gardner's employees and direct



its picketing at them, a step that most certainly would have been taken had the construction situs picketing been primarily for the purpose, as the Union claimed, of "organiz[ing] Gardner's employees \* \* \* and trying to have someone there that they could contact if they felt like joining the [Union]" (R. 79). The short of the matter is that the Union had an independent purpose in directing its appeal to the neutral employees, which it furthered without respect to the presence of Gardner's employees.

2. As shown *supra*, p. 3, Gardner's employees reported at the company's warehouse in Ontario at the beginning and end of each workday. The warehouse thus provided an available place for picketing where the Union could publicize its organizational purposes to Gardner's employees without implicating the neutral contractors and their employees who were located at scattered construction sites as much as 35-40 miles distant from the warehouse (R. 38). This circumstance alone has been regarded in like cases as evincing a purpose to involve neutrals when a union has extended its picketing activities to secondary locations. As stated by the Court of Appeals for the First Circuit (*N.L.R.B. v. United Steelworkers*, 250 F. 2d 184, 187):

Thus by picketing the premises of the primary employer . . . alone, the Union had a fully adequate opportunity to publicize its labor dispute to the members of the bargaining unit. . . . Certainly from these facts it was logical and reasonable for the Board to draw the inference that the Union's picketing of [the primary employer's] truck at the premises of sec-

ondary employers must have been designed, in part at least, to encourage those employers to cease doing business with [the primary employer], or to induce their employees not to handle or transport [the primary employer's] freight.

See also, *N.L.R.B. v. General Drivers, Local 984*, 251 F. 2d 494, 495 (C.A. 6); *N.L.R.B. v. Truck Drivers Local 728*, 228 F. 2d 791, 795 (C.A. 5); *N.L.R.B. v. Associated Musicians*, 226 F. 2d 900, 906 (C.A. 2), certiorari denied, 351 U.S. 962.<sup>5</sup>

3. Union business agent Devereaux, who was in charge of the Union's picketing program, made clear in his conversation with McClary, Hydro Company's partner, that a principal purpose of the picket line at California State Polytechnic College was to reach Hydro's employees. When McClary inquired whether Hydro employees could work free from the picketing during weekends and evenings, when Gardner's employees were not on the job, Devereaux replied that it was a 24 hour picket line, and that McClary "knew what would happen" if he were to have "his men sneak in after 4:30 when the picket left" (R. 81, 85). Although Section 8(b)(4)(A) does not reach statements of this character when addressed to neutral employers, they provide cogent evidence to resolve whatever ambiguity may otherwise exist as to the pur-

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<sup>5</sup> Cf. *Sales Drivers v. N.L.R.B.*, 229 F. 2d 514 (C.A.D.C.) certiorari denied, 351 U.S. 972, where the Court, although declining to view the availability of a primary situs for picketing as conclusive in showing an unlawful secondary purpose to the picketing of neutral premises, fully recognized that this factor should "be considered" in the determination of the purpose of such picketing. 229 F. 2d at 514.

pose of common situs picketing. *N.L.R.B. v. General Drivers, Local 984*, 251 F. 2d 494, 495 (C.A. 6); *Truck Drivers v. N.L.R.B.*, 249 F. 2d 512, 514 (C.A.D.C.) certiorari denied, 355 U.S. 958; *N.L.R.B. v. Associated Musicians*, 226 F. 2d 900, 904 (C.A. 2), certiorari denied, 351 U.S. 962.

4. The legend on the picket line which was in use during all but the last few days of the picketing at California State Polytechnic College did not confine the Union's appeal merely to Gardner's employees. On the contrary, it was addressed generally "To Employees" (*supra*, p. 4). Although the legend went on to state that "This is an organizational picket line," and that Gardner was "non-union," the implication of this kind of sign is "Respect our picket line \* \* \*" *Printing Specialties Union v. LeBaron*, 171 F. 2d 331, 334 (C.A. 9); see also, pp. 12-13, *supra*. This is particularly true in the situation where, as here, non-union men are employed on the same job as union men. Compare *N.L.R.B. v. Denver Building & Construction Trades Council*, 341 U.S. 675, 678-679-688. It is true that the picket sign language was made more restrictive on November 18, 1957, three days before picketing was removed altogether, but "This was long after the damage was done." *N.L.R.B. v. Laundry Drivers Local 928*, 262 F. 2d 617, 620 (C.A. 9).

5. Here, as in *Laundry Drivers Local 928, supra*, the Union made no attempt to communicate with neutral employees, apart from the legend on the picket signs, or to inform them that they were not being requested to leave their jobs. On the contrary, Dev-

ereaux instructed the pickets "to say nothing to no one. And if in their considered opinion as an emergency arose \* \* \* that they couldn't handle, by not saying anything, to contact me by telephone" (R. 69). Compare *Laundry Drivers Local 928, supra*, at 620, where the Court concluded, after considering a nearly identical set of instructions given to union pickets, that "the unions did nothing to dispel the natural effect of a picket line." See also, *Truck Drivers v. N.L.R.B.*, 249 F. 2d 512, 514 (C.A.D.C.).

In the instant case, moreover, the situation clearly called for clarification if the Union's purpose was as restricted as it claimed. For the Plumbers Union, which represented Hydro's employees, had refused to cooperate with McClary in any way to put these employees back on the job after they refused to work behind the picket line, and indeed, had even refused, so long as the picket line remained in effect, to permit its members to do work that was essential to avoid serious damage to the entire project (*supra*, p. 5). The only explanation for the Union's silence during this period is that the situation had evolved in accordance with Union purpose.

6. Finally, it is significant that the Union's picketing in fact induced work stoppages (*supra*, pp. 4-6). See *N.L.R.B. v. Business Machine Local 459*, 228 F. 2d 553, 560 (C.A. 2), certiorari denied 351 U.S. 962. From the overall conduct of the Union, such stoppages were plainly foreseeable, and in turn reflect the Union's purpose.

In view of all of the foregoing circumstances, the Board could fairly conclude that the picketing in this

case was carried on with a deliberate purpose of implicating neutrals in the Union's campaign to organize Gardner's employees. As shown, it is that purpose which illegalizes the picketing.

#### CONCLUSION

For the reasons stated it is respectfully submitted that a decree should issue enforcing the Board's order in full.

STUART ROTHMAN,  
*General Counsel,*  
 THOMAS J. McDERMOTT,  
*Associate General Counsel,*  
 MARCEL MALLET-PREVOST,  
*Assistant General Counsel,*  
 DUANE B. BEESON,  
 CHRISTOPHER J. HOEY,  
*Attorneys,*  
*National Labor Relations Board.*

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## APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 29 U.S.C., Secs. 151, *et seq.*), are as follows:

SECTION 7. Employees shall have the right to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

### UNFAIR LABOR PRACTICES

SECTION 8(b). It shall be an unfair labor practice for a labor organization or its agents—

\* \* \* \*

(4) To engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; \* \* \*

## LIMITATIONS

SECTION 13. Nothing in this Act, except as specifically provided herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.